



Howard Miller, Chair
City of Saratoga

Nancy Smith, Vice Chair
City of Sunnyvale

Liz Gibbons
City of Campbell

Rod Sinks
City of Cupertino

Fred M. Tovar
City of Gilroy

Neysa Fligor
City of Los Altos

George Tyson
Town of Los Altos Hills

Rob Rennie
Town of Los Gatos

Carmen Montano
City of Milpitas

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Susan Ellenberg
County of Santa Clara

**Silicon Valley Clean Energy Authority
Board of Directors Special Meeting**

Friday, November 13, 2020
3:00 pm

Teleconference Meeting
Webinar:

<https://zoom.us/j/95432788664>

Telephone (Audio Only):
US: +1 669 900 9128
Webinar ID: 954 3278 8664

This meeting will be conducted in accordance with [State of California Executive Order N-29-20](#), dated March 17, 2020, in consideration of the Coronavirus (COVID-19). All members of the Silicon Valley Clean Energy Board of Directors and staff will participate in this meeting by teleconference.

Members of the public may observe this meeting electronically by accessing the meeting via instructions above. Public Comments can be sent in advance of the meeting to Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org and will be read within the public comment period or the applicable agenda item. The public will also have an opportunity to provide comments during the meeting.

The public may provide comments on any matter listed on the Agenda. Speakers are customarily limited to 3 minutes each, however, the Board Chair may increase or decrease the time allotted to each speaker based on the number of speakers, the length of the agenda and the complexity of the subject matter. Speaking time will not be decreased to less than one minute.

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA") please contact Board Clerk Andrea Pizano at andrea.pizano@svcleanenergy.org prior to the meeting for assistance.

AGENDA

Call to Order

Roll Call

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087

Howard Miller, Chair
City of Saratoga

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Sunnyvale, CA 94087

Public Comment on Matters Not Listed on the Agenda

The public may provide comments on any matter not listed on the Agenda provided that it is within the subject matter jurisdiction of SVCE. Speakers are customarily limited to 3 minutes each, however, the Board Chair may increase or decrease the time allotted to each speaker based on the number of speakers, the length of the agenda and the complexity of the subject matter. Speaking time will not be decreased to less than one minute.

Consent Calendar (Action)

- 1a) Approve Minutes of the October 14, 2020, Board of Directors Meeting
- 1b) Receive August 2020 Treasurer Report
- 1c) Adopt Resolution Authorizing the Chief Executive Officer to Enter Into an Agreement with PFM Financial Advisors, LLC to Serve as the Municipal Financial Advisor on Prepayment Transaction
- 1d) Authorize the Chief Executive Officer to Negotiate and Execute an Amendment to the 17-year Power Purchase Agreement (PPA) for Renewable Supply (PCC1) and Energy Storage with RE Slate 1, LLC, in a Form Approved by SVCE General Counsel, to Adjust Certain Dates and Obligations
- 1e) Authorize the Chief Executive Officer to Amend 3-year Agreement with Enervee Corporation, Adding New Content and Services for eHub Appliances Assistant
- 1f) Adopt Resolution Approving Revised Budget Allocation Adjustment to Continue SVCE’s Innovation Programs for Two Additional Years
- 1g) Executive Committee Report
- 1h) Finance and Administration Committee Report
- 1i) Audit Committee Report

Regular Calendar

- 2) CEO Report (Discussion)
- 3) Adopt Resolution to Approve Building Decarbonization Joint Action Plan, Program Briefs for Cornerstone Programs & Budget Allocation Adjustment for Implementation (Action)
- 4) Adopt Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule to Add Senior Government Affairs Manager Position (Action)
- 5) Super Joint Powers Authority Information (Discussion)



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City of Mountain View

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Board Member Announcements and Direction on Future Agenda Items

Adjourn

svcleanenergy.org

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SVCE GLOSSARY OF TERMS

CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California’s electric flow). Its stated mission is to “operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development. CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California’s community choice electricity providers.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – Direct Access – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community

DASR – Direct Access Service Request – Request submitted by C&I to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer’s home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO’s electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

DR – Demand Response - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DWR – Department of Water Resources – DWR manages California’s water resources, systems, and infrastructure in a responsible, sustainable way.

ELCC – Effective Load Carrying Capacity – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

EPIC – Electric Program Investment Charge – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

ERRA – Energy Resource Recovery Account – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ESP – Energy Service Provider - An energy entity that provides service to a retail or end-use customer.

EV – Electric Vehicle

GHG – Greenhouse gas - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California’s three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GWh – Gigawatt-hour - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

IEP – Independent Energy Producers – California’s oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IOU – Investor Owned Utility – A private electricity and natural gas provider.

IRP – Integrated Resource Plan – A plan which outlines an electric utility’s resource needs in order to meet expected electricity demand long-term.

kW – Kilowatt – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – Kilowatt-hour – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day-ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

MW – Megawatt – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWH – Megawatt-hour – measure of energy

NP-15 – North Path 15 – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E's service territory.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as "in-state" renewables

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

PCIA or "exit fee" - Power Charge Indifference Adjustment (PCIA) is an "exit fee" based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).

PD – Proposed Decision – A procedural document in a CPUC Rulemaking process that is formally commented on by Parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

Pnode – Pricing Node – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

SGIP – Self-Generation Incentive Program – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

Time-of-Use (TOU) Rates – The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWh unit of renewable power where the actual power and the certificate are “unbundled” and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.



Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, October 14, 2020
7:00 pm

Pursuant to State of California Executive Order N-29-20, dated March 17, 2020, the meeting was conducted via teleconference.

DRAFT MINUTES

Call to Order

Chair Miller called the meeting to order at 7:01 p.m.

Roll Call

Present:

Chair Howard Miller, City of Saratoga
Vice Chair Nancy Smith, City of Sunnyvale
Director Liz Gibbons, City of Campbell
Director Rod Sinks, City of Cupertino
Director Neysa Fligor, City of Los Altos
Director George Tyson, Town of Los Altos Hills
Director Rob Rennie, Town of Los Gatos
Director Carmen Montano, City of Milpitas
Director Javed Ellahie, City of Monte Sereno (arrived at 7:02 p.m.)
Director Yvonne Martinez Beltran, City of Morgan Hill (arrived at 7:50 p.m.)
Director Margaret Abe-Koga, City of Mountain View (arrived at 7:05 p.m.)
Director Susan Ellenberg, County of Santa Clara

Absent:

Director Fred M. Tovar, City of Gilroy

All present Board members participated via teleconference.

Chair Miller pointed out the glossary of terms used in the board meeting packet.

Public Comment on Matters Not Listed on the Agenda

Bruce Karney, Carbon Free Mountain View (CFMV) and Carbon Free Silicon Valley (CFSV), commented the boards of CFMV and CFSV value the great working relationships developed with SVCE, and created a "Five-timers award" in recognition of directors who have served five terms: Director Sinks, Director Miller, and Director Gibbons. Karney noted certificates would be mailed to their homes, and thanked the directors for their service.

Chair Miller, Director Gibbons, and Director Sinks provided brief comments of appreciation and thanked CFMV and CFSV.

Consent Calendar

MOTION: Director Ellahie moved and Vice Chair Smith seconded the motion to approve the Consent Calendar.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

The motion carried by verbal roll call vote with Director Martinez Beltran and Tovar absent.

- 1a) Approve Minutes of the September 9, 2020, Board of Directors Meeting**
- 1b) Receive July 2020 Treasurer Report**
- 1c) Authorize the Chief Executive Officer to Execute a Confirmation Agreement with PG&E to Receive Carbon-free Allocation for 2021 to 2023 Deliveries**
- 1d) SVCE 2019 Annual Power Source Disclosure Report Attestation**
- 1e) Adopt Resolution to Authorize the Chief Executive Officer to Amend the Authority Delegated Under Approved Master Service Agreements with Energy and Environmental Economics, Hanover Strategy Advisors, Flynn Resources Consulting, and Ascend Analytics**
- 1f) Approve Health Savings Account Benefit Option for SVCE Employees**
- 1g) Receive 2020 Q3 Quarterly Programs Report**
- 1h) Authorize the Chief Executive Officer to Execute Agreement with Pacific Energy Advisors, Inc. for Technical Consulting Services**
- 1i) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Power Analyst Position in the List of Designated Positions for Filing**
- 1j) Adopt Resolution to Authorize the Chief Executive Officer to Amend Credit and Collateral Requirements in Approved Master Agreements to Incorporate the Investment Grade Credit Rating Provided the Amendments Are Favorable to the Authority**
- 1k) Authorize the Chief Executive Officer to Execute Agreement with Buro Happold for Community Energy Resilience Analysis, Planning, and Support Services**
- 1l) Closing Report of the Ad Hoc Committee of the Board to Address Legislative and Regulatory Responses to Industry Transition**
- 1m) Executive Committee Report**
- 1n) Finance and Administration Committee Report**
- 1o) Audit Committee Report**

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran introduced Sri Sukhi, Senior Data Engineer, who provided brief welcome comments. CEO Balachandran provided updates on a recent Flex Alert, and Public Safety Power Shutoff events. Director of Regulatory and Legislative Policy Melicia Charles and Senior Regulatory Analyst Poonum Agrawal presented a PowerPoint presentation on direct access; staff responded to board member questions.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

3) Approve Amended SVCE Strategic Plan (Action)

CEO Balachandran presented a PowerPoint presentation on SVCE's updated Strategic Plan and responded to board member questions.

Director Ellahie inquired about efforts toward censored traffic lights to avoid excess carbon emissions from running vehicles; CEO Balachandran noted staff would look into outreach with local and regional agencies.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

MOTION: Director Gibbons moved and Vice Chair Smith seconded the motion to approve the amended Silicon Valley Clean Energy Strategic Plan of October 2020.

The motion carried by verbal roll call vote with Director Tovar absent.

4) Adopt Resolution to Authorize the Chief Executive Officer to Enter Into Legal Services Agreements with Orrick, Herrington & Sutcliffe and Chapman & Cutler in Connection with Energy Prepayment Transaction (Action)

CEO Balachandran introduced the item and Michael Berwanger of PFM Financial Advisors LLC; CEO Balachandran presented a PowerPoint presentation. CEO Balachandran and Berwanger responded to board member questions.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

MOTION: Director Ellenberg moved and Director Ellahie seconded the motion to Adopt Resolution 2020-30 authorizing the Chief Executive Officer (CEO) to negotiate and execute Legal Services Agreements with the following firms for legal representation on SVCE's and EBCE's proposed energy prepayment transaction:

- Orrick, Herrington & Sutcliffe – roles of Bond Counsel and Tax Counsel
- Chapman & Cutler LLP – roles of Disclosure Counsel and Issuer's Counsel

The motion carried by verbal roll call vote with Director Tovar absent.

5) Long-Duration Storage and Super JPA Formation Update (Discussion)

CEO Balachandran presented a PowerPoint presentation and responded to board member questions.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

CEO Balachandran noted some of the questions asked would be brought back to the Executive Committee for more discussion.

Board Member Announcements and Direction on Future Agenda Items

Director Rennie commented he and Vice Chair Smith, Director Martinez Beltran, and some members of SVCE staff attended the Berkeley Haas Economics of Energy course and thanked SVCE for providing the opportunity. Director Rennie recommended the course to directors who have the time to participate.

CEO Balachandran commented on 1k) *Authorize the Chief Executive Officer to Execute Agreement with Buro Happold for Community Energy Resilience Analysis, Planning, and Support Services*, for consultant arrangement for resiliency planning. CEO Balachandran noted an email would be sent following the board meeting with details on the schematic of the program.

Director Fligor shared the City of Los Altos is on track for the approval of reach codes.

Vice Chair Smith commented the City of Sunnyvale would be addressing reach codes at the end of the month.

Adjourn

Chair Miller adjourned the meeting at 9:04 p.m.



TREASURER REPORT

**Fiscal Year to Date
As of August 31, 2020**

(Preliminary & Unaudited)

Issue Date: November 13, 2020

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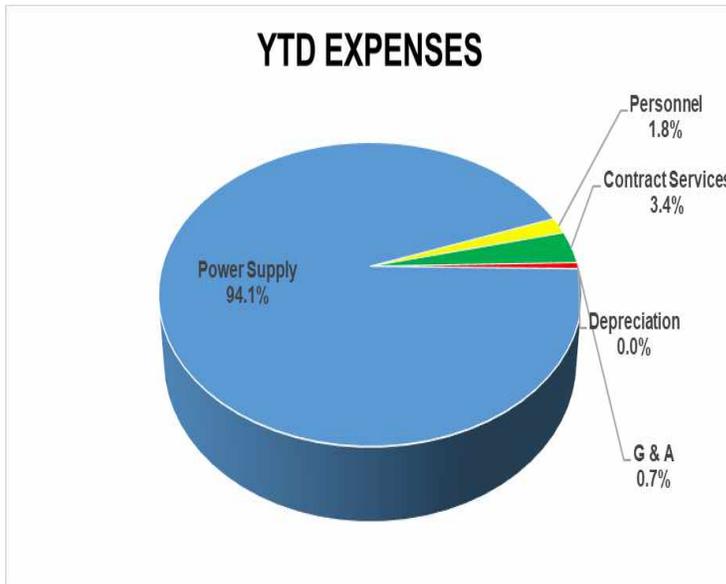
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SILICON VALLEY CLEAN ENERGY AUTHORITY
Financial Statement Highlights (\$ in 000's)

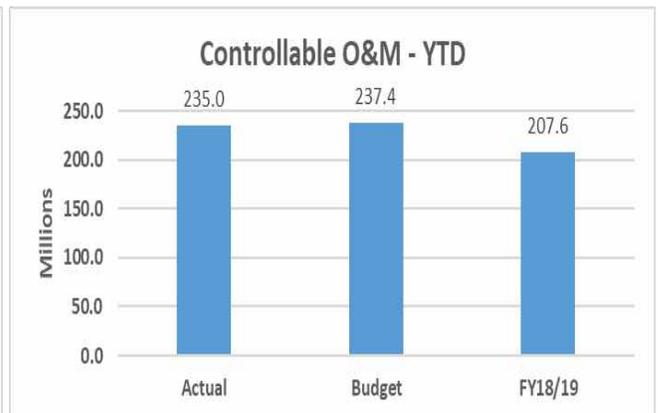
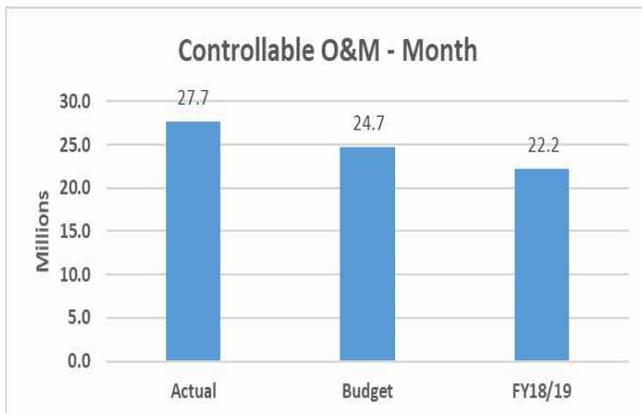
Financial Highlights for the month of August 2020:

- > SVCE operations resulted in a positive change in net position for the month of \$2.8 million and year-to-date change in net position of \$37.8 million.
- > Retail GWh sales for the month landed 4% above budget.
- > YTD operating margin of \$46.4 million or 18.4% is below budget expectations of a 22.3% operating margin at this point in the fiscal year.
- > Power Supply costs are 0.4% above budget year-to-date.
- > SVCE is investing ~95% of available funds generating year-to-date investment income of \$1.6 million

Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Actual	14,432	5,732	4,159	2,047	(326)	(6,757)	4,792	2,146	5,086	3,727	2,771		37,809	50,910
Power Supply Costs														
Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Energy & REC's	12,881	13,068	13,525	15,681	15,771	23,555	18,474	16,876	17,160	17,695	16,245		180,931	
Wholesale Sales	(807)	(9)	(10)	(21)	(46)	(106)	(34)	(56)	(209)	(39)	(445)		(1,783)	
Capacity	2,185	1,581	1,757	1,673	1,674	1,939	1,787	1,804	2,822	4,595	4,040		25,858	
CAISO Charges	451	400	763	678	715	1,211	408	526	(234)	1,102	3,312		9,331	
NEM Expense	155	(43)	(223)	(275)	(60)	5	(326)	387	723	741	274		1,358	
Charge/Credit (IST/Net Rev)	482	254	(224)	1,736	993	(417)	36	1,179	865	(853)	3,095		7,146	
Net Power Costs	15,347	15,251	15,588	19,473	19,047	26,186	20,344	20,717	21,128	23,241	26,520	-	222,842	245,340
Other														
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Capital Expenditures	-	6	6	2	-	-	-	-	-	-	-		14	400
Energy Programs	51	101	127	145	102	668	126	202	(101)	158	142		1,721	6,360
Load Statistics - GWh														
Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Retail Sales Actual	325	314	332	334	304	311	287	318	328	351	363		3,567	
Retail Sales Budget	325	318	335	329	311	316	308	307	321	360	348	339	3,916	3,916



Other Statistics and Ratios	
Working Capital	\$180,544,203
Current Ratio	6.1
Operating Margin	18%
Expense Coverage Days	221
Expense Coverage Days w/ LOC	267
Long-Term Debt	\$0
Total Accounts	272,093
Opt-Out Accounts (Month)	43
Opt-Out Accounts (FYTD)	610
Opt-Up Accounts (Month)	14
Opt-Up Accounts (FYTD)	92



SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of August 31, 2020

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 156,013,532
Accounts Receivable, net of allowance	28,063,258
Market settlements receivable	96,246
Accrued Revenue	19,264,166
Other Receivables	266,738
Prepaid Expenses	3,406,995
Deposits	4,232,364
Restricted cash	4,500,000

Total Current Assets **215,843,299**

Noncurrent assets

Capital assets, net of depreciation	113,925
Deposits	145,630

Total Noncurrent Assets **259,555**

Total Assets **216,102,854**

LIABILITIES

Current Liabilities

Accounts Payable	1,177,529
Accrued Cost of Electricity	32,709,865
Accrued Payroll & Benefits	413,935
Other accrued liabilities	25,000
User Taxes and Energy Surcharges due to other gov'ts	972,767
Supplier Security Deposits	-

Total Current Liabilities **35,299,096**

NET POSITION

Net investment in capital assets	113,925
Restricted for security collateral	4,500,000
Unrestricted (deficit)	176,189,833
Total Net Position	\$ 180,803,758

SILICON VALLEY CLEAN ENERGY AUTHORITY

**STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION**

October 1, 2019 through August 31, 2020

OPERATING REVENUES	
Electricity Sales, Net	\$ 265,251,515
GreenPrime electricity premium	1,193,496
Liquidated damages	6,600,000
Other Income	192,535
TOTAL OPERATING REVENUES	<u>273,237,546</u>
OPERATING EXPENSES	
Cost of Electricity	222,841,848
Contract services	8,130,234
Staff compensation and benefits	4,222,566
General & Administrative	1,564,031
Depreciation	48,264
TOTAL OPERATING EXPENSES	<u>236,806,943</u>
OPERATING INCOME(LOSS)	<u>36,430,603</u>
NONOPERATING REVENUES (EXPENSES)	
Interest Income	1,684,578
Financing costs	(306,380)
TOTAL NONOPERATING EXPENSES	<u>1,378,198</u>
CHANGE IN NET POSITION	37,808,801
Net Position at beginning of period	<u>142,994,957</u>
Net Position at end of period	<u>\$ 180,803,758</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS
October 1, 2019 through August 31, 2020

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 273,962,074
Liquidated damages	6,600,000
Other operating receipts	2,826,707
Payments to suppliers for electricity	(229,224,100)
Payments for other goods and services	(9,703,091)
Payments for staff compensation and benefits	(4,163,823)
Tax and surcharge payments to other governments	(5,261,798)
Net cash provided (used) by operating activities	<u>35,035,969</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Finance costs paid	(241,170)
Net cash provided (used) by non-capital financing activities	<u>(241,170)</u>

**CASH FLOWS FROM CAPITAL AND RELATED
FINANCING ACTIVITIES**

Acquisition of capital assets	<u>(14,151)</u>
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**CASH FLOWS FROM CAPITAL AND RELATED
FINANCING ACTIVITIES**

Interest income received	<u>1,684,578</u>
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Net change in cash and cash equivalents	36,465,226
Cash and cash equivalents at beginning of year	<u>124,048,306</u>
Cash and cash equivalents at end of period	<u>\$ 160,513,532</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)

October 1, 2019 through August 31, 2020

**RECONCILIATION OF OPERATING INCOME (LOSS) TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating Income (loss)	\$ 36,430,603
 Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	48,264
Revenue reduced for uncollectible accounts	1,070,060
(Increase) decrease in net accounts receivable	1,143,496
(Increase) decrease in energy settlements receivable	70,411
(Increase) decrease in other receivables	(248,838)
(Increase) decrease in accrued revenue	307,934
(Increase) decrease in prepaid expenses	(2,138,290)
(Increase) decrease in current deposits	(1,988,378)
Increase (decrease) in accounts payable	231,482
Increase (decrease) in accrued payroll & benefits	58,743
Increase (decrease) in energy settlements payable	(472,313)
Increase (decrease) in accrued cost of electricity	1,049,869
Increase (decrease) in accrued liabilities	(232,530)
Increase (decrease) in taxes and surcharges due to other governments	(266,224)
Increase (decrease) in supplier security deposits	(28,320)
Net cash provided (used) by operating activities	<u>\$ 35,035,969</u>

**SILICON VALLEY CLEAN ENERGY AUTHORITY
BUDGETARY COMPARISON SCHEDULE
October 1, 2019 through August 31, 2020**

	FYTD Actual	FYTD Budget	Variance \$	%	FY 2019-20 Budget	FY 2019-20 Remaining Budget
OPERATING REVENUES						
Energy Sales	\$265,251,515	\$284,597,936	-\$19,346,421	-7%	\$317,230,000	\$51,978,485
Green Prime Premium	1,193,496	858,477	335,019	39%	940,000	(253,496)
Liquidated Damages	6,600,000	-	6,600,000		-	
Other Income	192,535	45,833	146,702	320%	50,000	(142,535)
TOTAL OPERATING REVENUES	273,237,546	285,502,246	(12,264,700)	-4%	318,220,000	51,582,454
ENERGY EXPENSES						
Power Supply	222,841,848	221,899,069	942,779	0.4%	245,340,000	22,498,152
Operating Margin	50,395,698	63,603,177	(13,207,479)	-21%	72,880,000	
OPERATING EXPENSES						
Data Management	2,964,224	3,231,716	(267,492)	-8%	3,530,000	565,776
PG&E Fees	1,058,249	1,233,928	(175,679)	-14%	1,350,000	291,751
Salaries & Benefits	4,222,566	5,035,579	(813,013)	-16%	5,490,000	1,267,434
Professional Services	2,239,996	3,425,750	(1,185,754)	-35%	3,710,000	1,470,004
Marketing & Promotions	425,031	878,295	(453,264)	-52%	960,000	534,969
Notifications	108,623	148,000	(39,377)	-27%	160,000	51,377
Lease	343,610	550,000	(206,390)	-38%	600,000	256,390
General & Administrative	776,955	1,045,000	(268,045)	-26%	1,150,000	373,045
TOTAL OPERATING EXPENSES	12,139,254	15,548,268	(3,409,014)	-22%	16,950,000	4,810,746
OPERATING INCOME/(LOSS)	38,256,444	48,054,909	(9,798,465)	-20%	55,930,000	17,673,556
NON-OPERATING REVENUES						
Investment Income	1,684,578	1,347,042	337,536	25%	1,470,000	(214,578)
Grant Income	-	148,958	(148,958)	-100%	160,000	160,000
TOTAL NON-OPERATING REVENUES	1,684,578	1,496,000	188,578	13%	1,630,000	(54,578)
NON-OPERATING EXPENSES						
Financing	306,380	172,558	133,822	78%	180,000	(126,380)
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	14,151	383,334	(369,183)	-96%	400,000	385,849
Refund of Bond (Cash Inflow)	-	-	-	0%	(100,000)	(100,000)
Financial Security Requirement	-	-	-	0%	147,000	147,000
Transfer to Program Fund	6,360,000	6,360,000	-	0%	6,360,000	-
Transfer to CRCR Fund	8,500,000	8,500,000	-		8,500,000	-
TOTAL OTHER USES	14,874,151	15,243,334	(369,183)	-2%	15,307,000	432,849
NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE	\$24,760,491	\$34,135,017	-\$9,374,526	-27%	\$42,073,000	

**SILICON VALLEY CLEAN ENERGY AUTHORITY
PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2019 through August 31, 2020**

REVENUE & OTHER SOURCES:	<u>BUDGET</u>	<u>ACTUAL</u>	<u>BUDGET REMAINING</u>	<u>ACTUAL/ BUDGET</u>
Transfer from Operating Fund	\$6,360,000	\$6,360,000	\$0	100%
EXPENDITURES & OTHER USES:				
Program expenditures	6,360,000	1,720,621	4,639,379	27.1%
Net increase (decrease) in fund balance	<u>\$0</u>	<u>\$4,639,379</u>		
Fund balance at beginning of period		-		
Fund balance at end of period		<u>\$4,639,379</u>		

**CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2019 through August 31, 2020**

REVENUE & OTHER SOURCES:	<u>BUDGET</u>	<u>ACTUAL</u>	<u>REMAINING</u>	<u>BUDGET</u>
Transfer from Operating Fund *	\$8,500,000	\$8,500,000	\$0	100%
EXPENDITURES & OTHER USES:				
Program expenditures *	8,500,000	56,953	8,443,047	0.7%
Net increase (decrease) in fund balance	<u>\$0</u>	<u>\$8,443,047</u>		
Fund balance at beginning of period		-		
Fund balance at end of period		<u>\$8,443,047</u>		

*\$3.5M of Customer Relief & Community Resiliency efforts aimed at providing bill credits to customers is reflected as a reduction in sales revenue on the main Operating Fund budget. Accordingly, this amount is not reflected in the CRCR budget presented above.

SILICON VALLEY CLEAN ENERGY AUTHORITY

**BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION**
October 1, 2019 through August 31, 2020

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 24,760,491
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(48,267)
Subtract program expense not in operating budget	(1,720,621)
Subtract CRCR expense not in operating budget	(56,953)
Add back transfer to Program fund	6,360,000
Add back transfer to Customer Relief & Community Resiliency fund	8,500,000
Add back capital asset acquisition	14,151
Change in Net Position	<u>37,808,801</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2019 through August 31, 2020

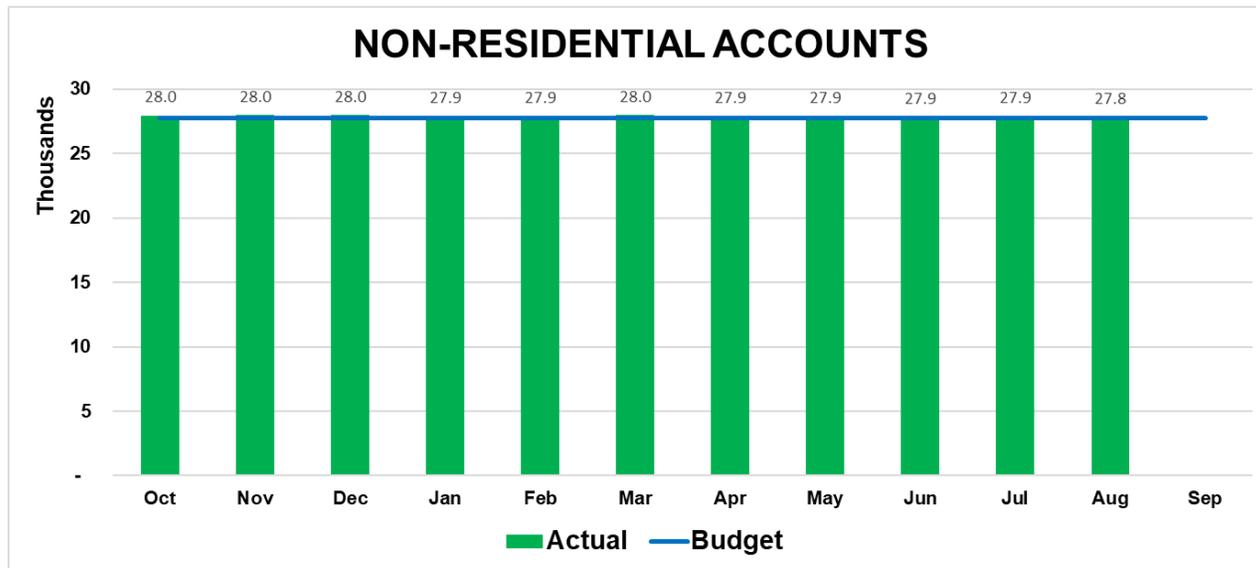
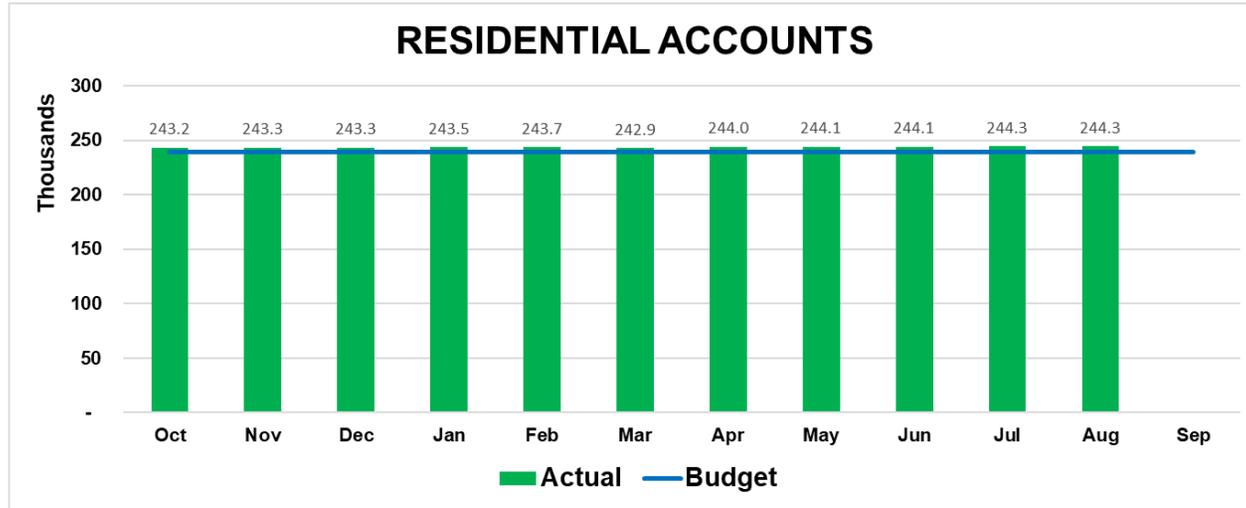
	October	November	December	January	February	March	April	May	June	July	August	September	YTD
OPERATING REVENUES													
Electricity sales, net	\$ 30,729,014	\$ 21,850,841	\$ 20,977,174	\$ 22,440,755	\$ 19,670,594	\$ 20,459,015	\$ 19,447,436	\$ 23,937,575	\$ 27,268,019	\$ 28,096,587	\$ 30,374,505		\$ 265,251,515
Green electricity premium	117,448	97,649	111,859	121,089	103,324	120,092	102,355	80,481	114,482	114,019	110,698		1,193,496
Liquidated damages	-	-	-	-	-	-	6,600,000	-	-	-	-		6,600,000
Other income	40,200	53,094	-	29,662	23,767	-	-	45,812	-	-	-		192,535
Total operating revenues	<u>30,886,662</u>	<u>22,001,584</u>	<u>21,089,033</u>	<u>22,591,506</u>	<u>19,797,685</u>	<u>20,579,107</u>	<u>26,149,791</u>	<u>24,063,868</u>	<u>27,382,501</u>	<u>28,210,606</u>	<u>30,485,203</u>	<u>-</u>	<u>273,237,546</u>
OPERATING EXPENSES													
Cost of electricity	15,346,608	15,251,256	15,587,871	19,473,377	19,046,944	26,186,358	20,343,763	20,716,921	21,126,584	23,242,181	26,519,985		222,841,848
Staff compensation and benefits	358,403	325,710	427,518	371,306	350,980	411,965	384,658	400,351	405,921	404,609	381,145		4,222,566
Data manager	291,256	290,953	291,025	260,475	261,133	261,253	259,596	260,000	262,078	263,195	263,260		2,964,224
Service fees - PG&E	96,070	95,877	95,882	95,000	96,846	96,840	97,800	96,020	96,306	96,303	95,305		1,058,249
Consultants and other professional fees	249,638	266,760	499,433	353,118	488,259	354,922	292,217	381,993	371,030	449,529	400,862		4,107,761
General and administration	153,979	210,400	211,420	183,108	30,495	199,289	110,396	103,391	135,078	104,757	121,718		1,564,031
Depreciation	4,375	4,375	4,560	4,612	4,612	4,612	4,612	4,612	4,612	2,974	4,308		48,264
Total operating expenses	<u>16,500,329</u>	<u>16,445,331</u>	<u>17,117,709</u>	<u>20,740,996</u>	<u>20,279,269</u>	<u>27,515,239</u>	<u>21,493,042</u>	<u>21,963,288</u>	<u>22,401,609</u>	<u>24,563,548</u>	<u>27,786,583</u>	<u>-</u>	<u>236,806,943</u>
Operating income (loss)	<u>14,386,333</u>	<u>5,556,253</u>	<u>3,971,324</u>	<u>1,850,510</u>	<u>(481,584)</u>	<u>(6,936,132)</u>	<u>4,656,749</u>	<u>2,100,580</u>	<u>4,980,892</u>	<u>3,647,058</u>	<u>2,698,620</u>	<u>-</u>	<u>36,430,603</u>
NONOPERATING REVENUES (EXPENSES)													
Interest income	180,933	184,968	196,888	206,014	185,526	188,324	144,189	140,441	104,689	80,275	72,331		1,684,578
Financing costs	(135,103)	(9,316)	(9,315)	(9,316)	(29,844)	(9,315)	(9,316)	(94,855)	-	-	-		(306,380)
Total nonoperating revenues (expenses)	<u>45,830</u>	<u>175,652</u>	<u>187,573</u>	<u>196,698</u>	<u>155,682</u>	<u>179,009</u>	<u>134,873</u>	<u>45,586</u>	<u>104,689</u>	<u>80,275</u>	<u>72,331</u>	<u>-</u>	<u>1,378,198</u>
CHANGE IN NET POSITION	\$ 14,432,163	\$ 5,731,905	\$ 4,158,897	\$ 2,047,208	\$ (325,902)	\$ (6,757,123)	\$ 4,791,622	\$ 2,146,166	\$ 5,085,581	\$ 3,727,333	\$ 2,770,951	\$ -	\$ 37,808,801

**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2019 through August 31, 2020**

Return on Investments	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>YTD Total</u>
<i>Money Market</i>	\$180,933	\$184,968	\$196,888	\$206,014	\$185,526	\$188,324	\$144,189	\$140,441	\$104,689	\$80,275	\$72,331	\$0	\$1,684,578
<hr/>													
Portfolio Invested													
<i>Average daily portfolio available to invest*</i>	114,832,942	124,956,925	140,310,822	148,981,775	150,166,653	149,893,470	151,620,999	158,860,920	149,632,269	144,300,184	150,663,074		
<i>Average daily portfolio invested</i>	102,127,452	120,538,388	130,715,414	137,957,394	137,649,041	139,005,163	140,220,462	149,136,404	141,669,779	138,623,502	143,729,680		
<i>% of average daily portfolio invested</i>	88.9%	96.5%	93.2%	92.6%	91.7%	92.7%	92.5%	93.9%	94.7%	96.1%	95.4%		
<hr/>													
Detail of Portfolio													
	<u>Opening Rate</u>		<u>August Rate</u>		<u>Carrying Value</u>		<u>Interest Earned</u>						
<i>Money Market - River City Bank</i>	1.26%		0.60%		\$145,154,454		\$72,267						

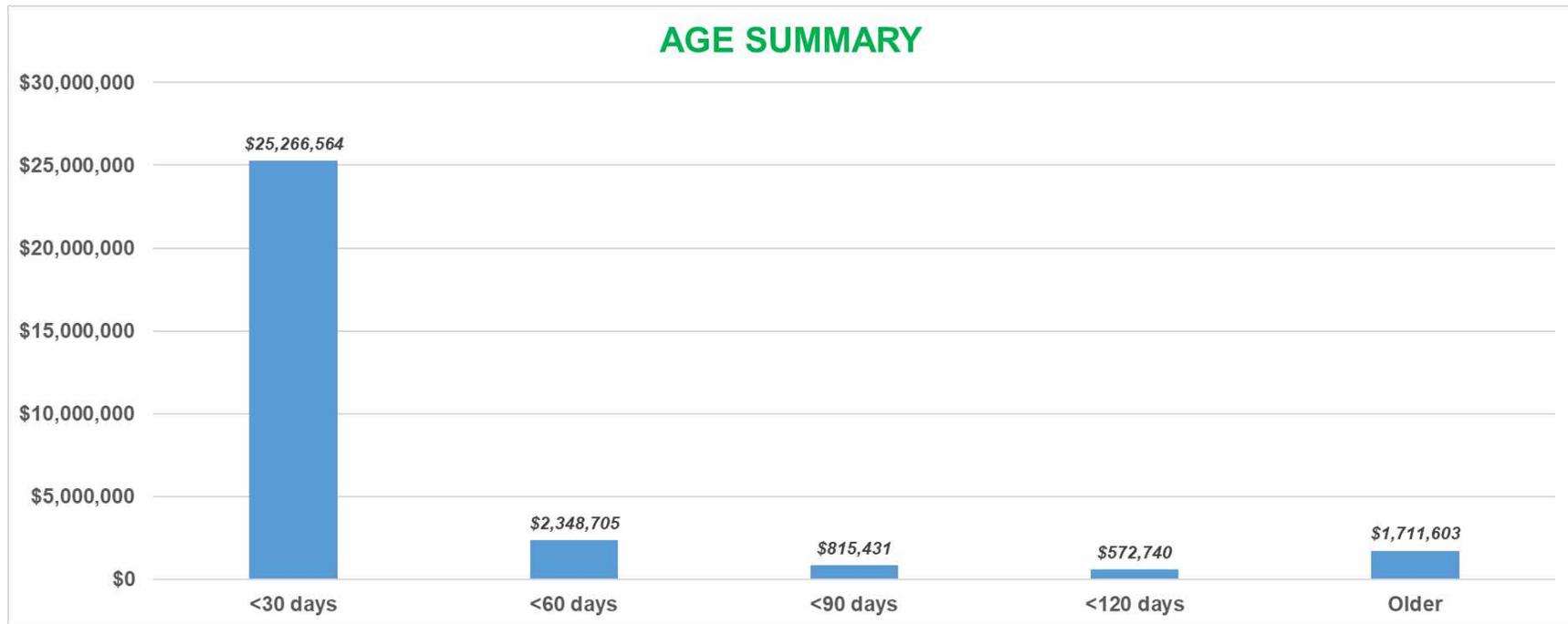
* Note: Balance available to invest does not include lockbox or debt serve reserve funds.

CUSTOMER ACCOUNTS



SILICON VALLEY CLEAN ENERGY AUTHORITY ACCOUNTS RECEIVABLE AGING REPORT

	December	January	February	March	April	May	June	July	August
0 to 30 days	86.6%	84.7%	88.3%	87.9%	82.6%	82.8%	83.7%	84.8%	82.3%
31 to 60 days	4.9%	5.1%	4.6%	4.1%	7.9%	6.2%	6.8%	5.6%	7.6%
61 to 90 days	3.0%	2.4%	1.8%	1.8%	2.5%	3.3%	2.7%	2.6%	2.7%
91 to 120 days	0.8%	1.6%	0.9%	1.3%	1.5%	2.1%	1.7%	1.9%	1.9%
Over 120 days	4.7%	6.2%	4.4%	4.9%	5.6%	5.6%	5.0%	5.1%	5.6%



Accounts Receivable Days
41 DAYS
\$30,715,043
TOTAL DUE
Bad Debt % (<i>Budget</i>)
0.5%



Staff Report – Item 1c

Item 1c: **Adopt Resolution Authorizing the Chief Executive Officer to Enter Into an Agreement with PFM Financial Advisors, LLC to Serve as the Municipal Financial Advisor on Prepayment Transaction**

From: Girish Balachandran, CEO

Prepared by: Don Rhoads, Interim CFO and Director of Administrative Services

Date: 11/13/2020

RECOMMENDATION

Adopt Resolution 2020-31 authorizing the Chief Executive Officer (CEO) to negotiate and execute a Consulting Services Agreement with PFM Financial Advisors, LLC (PFM) to serve as the municipal financial advisor on SVCE’s and EBCE’s proposed energy prepayment transaction.

BACKGROUND

The CEO and staff have been evaluating the benefits of participating with East Bay Community Energy (EBCE) in an Energy Prepayment Transaction (prepay). The CEO made a presentation on this proposal at the September Board meeting and again at the October Board meeting when approval was given to enter into agreements with legal counsel related to the potential prepay. The CEO also has made presentations on this transaction to the Executive Committee and Finance & Administration Committee. Specialized municipal financial advisory services are required to be retained as part of the prepay that is being considered by SVCE and EBCE.

ANALYSIS AND DISCUSSION

A prepay is a long-term financial transaction available to municipal utilities and tax-exempt entities such as CCAs that enables a meaningful power procurement cost savings opportunity. Utilizing the municipal bond market, a tax-exempt Load Serving Entity (LSE, also called “Prepay Buyer”) and a taxable financial counterparty (a bank, called “Prepay Supplier”) enter into a 30-year agreement through which the LSE assigns power supply contracts to the Prepay Supplier. The tax-exempt bonds are issued by a third-party conduit to raise funds for the prepay transaction, which flow to the Prepay Supplier. The Prepay Supplier pays the contract price to the PPA provider, while the LSE pays the Prepay Supplier at a discounted rate. The discounted rate is agreed upon in the prepay documents and is based in part on the spread between the taxable and tax-exempt bond interest rates. The market availability of this interest rate spread is critical to the savings opportunity available to an LSE through a prepay.

If the prepay program terminates early for any reason – either the Prepay Supplier or the LSE fail to perform – the LSE forgoes future savings and the assigned PPA is transferred back to the LSE. Two key features of the municipal bonds utilized in a prepay greatly reduce risk to the LSE. First, the bonds are non-recourse to the LSE, meaning they are neither secured nor guaranteed by the LSE and SVCE will at no point be responsible for repaying the bonds. Secondly, prepays are off balance sheet for the LSE as the bonds are issued by a third-party conduit and arranged by the Prepay Supplier.

SVCE and EBCE jointly issued a solicitation in November 2019 to identify potential Prepay Suppliers, through which Morgan Stanley was shortlisted and selected. The two CCAs also jointly issued a solicitation in June 2020 for legal counsel, through which Orrick, Herrington & Sutcliffe and Chapman & Cutler LLP were selected, and another solicitation was issued in September for municipal financial advisory services, through which PFM was selected.

Agenda Item: 1c**Agenda Date: 11/13/2020**

The prepay transaction requires the selection and involvement of multiple parties. Names and functions are as follows:

Prepay Buyer: SVCE and EBCE, jointly

- Role: Provide energy contracts to flow through prepay

Prepay Seller: Morgan Stanley

- Role: Structure transaction and pay contract price to PPA provider
- *Note: No legal obligation or liabilities are being entered into currently; approval of counsel allows SVCE and EBCE to negotiate documents with Morgan Stanley for which staff will later return to the Board for approval of the official prepay transaction and associated bond issuance.*

Municipal Advisor: PFM Financial Advisors LLC (pending approval by the Board)

- Role: Advise Prepay Buyer in negotiations; required by Municipal Securities Rulemaking Board (MSRB)

Bond Counsel: Orrick, Herrington & Sutcliffe

- Role: Represent bondholders

Tax Counsel: Orrick, Herrington & Sutcliffe

- Role: Provide tax opinion on transaction

Issuer's Counsel: Chapman & Cutler LLP

- Role: Represent issuer's interests, support drafting and negotiating terms of prepay agreement and associated energy supply agreements

Disclosure Counsel: Chapman & Cutler LLP

- Role: Prepare Official Statement / Prospectus

Bond Issuer: A conduit JPA

- Role: Issue municipal bonds for prepay
- *Note: A conduit JPA made up of CCA's for the issuance of bonds is in the process of being formed and will be subject to the approval of the Board. At this point, planned founding member CCAs are: Silicon Valley Clean Energy, Marin Clean Energy, East Bay Community Energy, and Central Coast Community Energy (formerly Monterey Bay Community Power).*

With the Board's previous approval of legal counsel and with approval of the municipal financial advisor, program structuring, document drafting and negotiations with Morgan Stanley will commence. Draft documents for Board review and approval are anticipated to be completed by the end of the calendar year.

Municipal financial advisory fees will be paid as follows:

- These fees may be structured as contingent fees paid out of the proceeds of the prepay transaction upon the successful execution of the program. Alternatively, SVCE may pursue non-contingent fees based on an hourly or quarterly fee structure, which is subject to further negotiation. In all cases, the advisor fees total an amount not to exceed \$250,000. These fees would be shared with EBCE as a joint prepay transaction.

ATTACHMENT

1. Resolution 2020-31 Authorizing the Chief Executive Officer to Enter Into a Consulting Services Agreement with PFM Financial Advisors, LLC as Municipal Financial Advisor for the Proposed Energy Prepayment Transaction

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2020-31

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO ENTER INTO A CONSULTING SERVICES AGREEMENT WITH PFM FINANCIAL ADVISORS, LLC AS MUNICIPAL FINANCIAL ADVISOR FOR THE PROPOSED ENERGY PREPAYMENT TRANSACTION

WHEREAS, the Silicon Valley Clean Energy Authority (“Authority”) was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, in order to achieve a significant reduction in power procurement costs, Authority and East Bay Community Energy (EBCE) are considering entering into an energy prepayment transaction involving the issuance of tax-exempt bonds by a third party conduit agency for which there would be no recourse against the Authority; and

WHEREAS, a Municipal Financial Advisor is required to be retained to provide financial advice to the Authority and EBCE as part of such transaction; and

WHEREAS, PFM Financial Advisors, LLC was selected as the proposed Municipal Financial Advisor through a solicitation issued jointly with EBCE in June 2020.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve, determine, and order as follows:

Section 1. The Chief Executive Officer is hereby authorized to negotiate and execute a Consultant Services Agreement with PFM Financial Advisors, LLC for Municipal Financial Advisors services at a cost not to exceed \$250,000 that will be shared equally with EBCE.

PASSED AND ADOPTED this 13th day of November 2020, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				

City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

Chair

ATTEST:

Andrea Pizano, Board Secretary



Staff Report – Item 1d

Item 1d: Authorize the Chief Executive Officer to Negotiate and Execute an Amendment to the 17-year Power Purchase Agreement (PPA) for Renewable Supply (PCC1) and Energy Storage with RE Slate 1, LLC, in a Form Approved by SVCE General Counsel, to Adjust Certain Dates and Obligations

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources

Date: 11/13/2020

RECOMMENDATION

Staff requests that the Silicon Valley Clean Energy Authority (SVCE) Board delegate authority to the Chief Executive Officer (CEO) to negotiate and execute an amendment to the Amended and Restated Power Purchase Agreement (PPA) for Renewable Supply (PCC1) and Energy Storage with RE Slate 1, LLC., ("Slate"), in a form approved by SVCE General Counsel, to adjust certain PPA dates and obligations without impacting the PPA overall value or not to exceed authority of \$198,500,000.

BACKGROUND

In October 2018, following a joint request for offers with Central Coast Community Energy (3CE), formerly known as Monterey Bay Community Power, the Board authorized via Resolution No. 2018-11, the CEO to execute the Recurrent Energy (RE) Slate 1 LLC project for a new solar photovoltaic (PV) and energy storage project to be built in Kings County, California. The original RE Slate PPA was a 15-year agreement for 82.5 MW Solar PV plus a 24.75 MW battery energy storage system with energy deliveries starting on June 30, 2021 and ending on June 29, 2036, in an amount not to exceed \$141,000,000.

On February 12, 2020, the SVCE Board delegated to the CEO via Resolution No. 2020-04 the authority to execute an Amended and Restated Power Purchase Agreement (PPA) with RE Slate 1, LLC., ("Slate") to extend the power delivery term from 15 years to 17 years and increase the solar photovoltaic (PV) and energy storage capacity to 93 MW and 46.5 MW, respectively. The PPA was executed on February 14, 2020 with a power deliver term of June 30, 2021 to June 29, 2038, in an amount not to exceed \$198,500,000.

DISCUSSION/ANALYSIS

Slate is located in Kings County and will serve about 6.4% of SVCE's load when it becomes operational. The project will contribute towards meeting SVCE's renewable portfolio standard and clean energy goals along with long-term procurement mandates under SB 350.

While per the current PPA, the project is expected to start operations on June 30, 2021, RE Slate may exercise a period of excused delays. RE Slate has informed SVCE and 3CE of potential delays to the project resulting from delays in securing financing due to COVID-19 and a Presidential Executive Order related to obtaining certain equipment from countries deemed foreign adversaries. As such SVCE, 3CE and RE Slate ("Parties") are currently negotiating terms to accommodate financing requirements being imposed on RE Slate from its new financial investors. RE Slate's investors have set the end of November 2020 as the deadline to close

Agenda Item: 6**Agenda Date: 11/13/2020**

financing. To ensure that financing closes timely and the project moves forward, the Parties are negotiating changes to dates and obligations under the PPA. Delegation of authority to the CEO is necessary to make sure the project moves forward as planned given the tight timeline and the number of parties involved.

STRATEGIC PLAN

SVCE's Strategic Plan, Goal #5; Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner, directs staff to acquire long-term agreements to meet California's long-term renewable mandate and diversify deployment of renewable technologies. Delegating authority to the CEO to negotiate and execute amendments to the RE Slate PPA will help satisfy Goal #5.

ALTERNATIVE

In the interest of keeping RE Slate 1 on track for successful completion and operation, staff is recommending the CEO negotiate and execute an amendment that will assist RE Slate secure financing subject to approval by SVCE's general counsel of the form of the amendments.

Alternatively, SVCE staff could wait until the terms of the amendments are fully negotiated and then bring the amendments to the PPA to the Board for approval. This alternative may jeopardize the ability to implement the changes in a timely manner and thus jeopardize RE Slate's ability to secure project financing. Failure to secure financing puts the development of the project at risk thus exposing SVCE to greater uncertainty and risk in meeting its SB 350 long-term compliance requirements.

FISCAL IMPACT

The changes being contemplated will not reduce the overall value or increase the overall cost of the Slate PPA but may shift some risks between the parties. SVCE's total security deposits will stay the same.

The RE Slate PPA has been included in the 2020-21 fiscal year budget. Impacts to FY 2020-21 resulting from the amendments may be reflected in the mid-year adjustments.



Staff Report – Item 1e

Item 1e: Authorize the Chief Executive Officer to Amend 3-year Agreement with Enervee Corporation, Adding New Content and Services for eHub Appliances Assistant

From: Girish Balachandran, CEO

Prepared by: Don Bray, Director of Account Services and Community Relations

Date: 11/13/2020

RECOMMENDATION

Staff recommends that the Board authorize the Chief Executive Officer to amend the previously approved \$471,500 3-year agreement with Enervee Corporation for an amount not-to-exceed \$95,000 (cost over remaining 2.5 year contract period) to add strategic product categories and capabilities as they are developed, that expand opportunities for education on electrification and customer action on the eHub Appliances Assistant site.

BACKGROUND

In 2018, the Customer Program Advisory Group (CPAG) advocated for development of an online platform to help engage and educate residential customers regarding their energy use and enable action to electrify their homes and vehicles. To meet this objective, the Customer Resource Center (CRC) program was recommended and approved by the SVCE Board in December 2018 as part of the Decarb Programs Roadmap.

SVCE released an RFI in May 2019 to gather related information and services available to deploy in an online CRC. Subsequently, Staff issued an RFP in October 2019, for proposals to provide selected online tools to help customers increase their energy literacy and enable actions such as evaluating home appliances, electric vehicles, solar and storage options, and shopping for clean energy products.

In late 2019 and early 2020, SVCE contracted with three vendors of online tools – Enervee, ZappyRide, and PickMySolar, for inclusion in the online CRC. To support ongoing license costs associated with vendor tools, Resolution 2020-06 established a \$250,000 annual budget allocation for the ongoing operation of eHub in FY2021 and FY2022. Annual license costs as contracted for the three vendor tools currently total \$188,000. It was anticipated that the remaining \$62,000 would be available for future content and services then under development by the vendors.

In summer 2020, the Customer Resource Center, now called the 'eHub', was launched for a soft release to complete user testing and refinement. In September and October 2020, eHub was formally launched to customers. Per goals identified in SVCE's strategic plan, SVCE is currently planning its first online customer promotion during the holiday timeframe (Nov. 2020 – Jan. 2021). This online promotion through the eHub Appliance Assistant will likely feature portable induction cooktops, LED lighting and smart power strips, utilizing product catalog, promotion and discounting capabilities provided by the Enervee platform.

ANALYSIS & DISCUSSION

The objective of eHub is to help inspire, educate and enable customers to take effective personal action with respect to electrification and decarbonization, in mobility and the built environment. Significant education is needed to help familiarize customers with electrification, and the benefits of technologies such as induction cooking, heat pump water heating, heat pump heating and cooling, electric vehicles, solar and storage, and connected devices.

The Enervee platform, known as the 'Appliances Assistant' on SVCE's eHub, provides customers with online educational resources to support an understanding of home appliance energy consumption, energy savings and electrification - including product and price comparisons, energy efficiency and customer reviews. Customers can then link directly to retailers (e.g. Best Buy, Amazon) to place orders. If desired, SVCE can offer post-purchase discounts/rebates. For certain products that can be more easily warehoused, such as smart thermostats or LED lightbulbs, Enervee offers a more direct retail experience, enabling SVCE to provide real-time discounts at time of purchase. Also, customers have access to pre-screened local service providers through HomeAdvisor.

Staff has identified new features and content currently under development by Enervee that will expand SVCE's ability to meet customers' needs, build awareness and promote home electrification. In response to feedback from SVCE and other utility customers, Enervee is developing new functionality that can be integrated into Appliances Assistant. The list below includes cost estimates for the addition of new content and services not included in the original SVCE contract with Enervee:

- \$45k: allowance for additional annual license fees associated with selected new product categories currently under development, e.g. portable + fixed induction cooktops, expanded HVAC offerings, electric tools
- \$40k: allowance for administration fees to provide downstream discounts that customers may redeem through Appliances Assistant
- \$10k: other new features/tools, e.g. ability to offer unique discounts for CARE/FERA customers

Staff requests the Board of Directors approve an allowance for future amendments to the existing 3-year Enervee contract, not-to-exceed a total of \$95,000, for new content and functionality. This will add a maximum of approximately \$38,000 annually to Enervee's current annual license fees of \$148,000 over the remaining 2.5 years of the contract agreement. It will increase SVCE's annual license fees for all eHub tools to approximately \$226,000, which remains under the annual \$250,000 support budget as approved in Resolution 2020-06.

STRATEGIC PLAN

In the SVCE Board-adopted Strategic Plan, the eHub Appliances Assistant will help to achieve Goal 10: Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices.

The measures identified to achieve this goal are specific to eHub:

2. Scale SVCE's digital customer engagement capabilities, and conduct 3+ full-scale direct email communications campaigns, plus focused customer email campaigns – totaling 1M+ outbound messages
3. Engage 20,000+ new unique visitors to SVCE eHub resources
4. Conduct two pilot online retail promotions

ALTERNATIVE

Maintain the existing contract for the remainder of the contract period with no additional product categories or features. SVCE customers will not have access to induction cooktop information and products on eHub Appliances Assistant, and SVCE will not be able to provide downstream rebates.

FISCAL IMPACT

Resolution 2020-06 established a \$250,000 annual budget allocation for the ongoing operation of eHub in FY2021 and FY2022. If this contract extension is approved, SVCE's annual license fees for eHub tools will increase to approximately \$226,000, which remains under the annual \$250,000 budget as approved in Resolution 2020-06.

ATTACHMENTS

1. Envervee Customer Resource Center Appliance Marketplace Agreement

Master Service Agreement

This agreement is entered into between Enervee Corporation (“**Enervee**”) and Silicon Valley Clean Energy Authority, an independent public agency (“**Partner**”) as of the date this Agreement is executed by both Parties – April 17, 2020 (the “**Effective Date**”) and incorporates (i) the attached Terms and Conditions, which sets forth the general terms and conditions governing the relationship of the Parties, (ii) each Order Form executed pursuant to the Terms and Conditions, each of which describes the specific services to be provided by Enervee to Partner, and (iii) all other exhibits and attachments expressly incorporated herein (collectively, and as amended from time to time, the “**Agreement**”). Each of Enervee and Partner may be referred to as a “**Party**” and together as the “**Parties**.”

MASTER SERVICE AGREEMENT

1. DEFINITIONS.

Certain terms used in this Agreement, not otherwise defined on the cover page, shall have the meanings set forth below.

1.1. “Administrative User” means an employee or contractor of Partner to whom Partner has assigned a unique identification number for access to the Web-based portion(s) of the Services for Partner’s own use as specified in an Order Form.

1.2. “Aggregated Data” means aggregated and statistical data derived from the operation of the Service, including, without limitation, information, improvements, updates, enhancements, business practices, trends, analyses, metadata, performance results or other information or data which Enervee may develop in the course of providing the Services. For the avoidance of doubt, Aggregated Data shall not include any Personal Information and must be anonymized.

1.3. “Brand” means any trademarks, service marks, trade names, domain names, logos, business names, product names and slogans, and all registrations and applications for registration thereof owned by or licensed to a Party or to which the Party has rights.

1.4. “Partner Data” means any data or information supplied by Partner to Enervee under this Agreement or any Customer Information. Partner Data excludes Enervee Intellectual Property and Third Party Data.

1.5. “Personal Information Laws” mean California Consumer Privacy Act of 2018, Cal. Civil Code § 1798.100 et seq. and its implementing regulations (the “CCPA”) and similar state data privacy laws.

1.6. “Confidential Information” means, whether written or oral, (i) know-how, business methods, intellectual property, trade secrets, financial data and any other non-public, confidential or proprietary information of a Party and (ii) information that, by the nature of the information or the circumstances surrounding disclosure, ought reasonably to be treated as confidential. For purposes of this Agreement, Enervee Intellectual Property and Third Party Data shall be the Confidential Information of Enervee and Partner Data shall be the Confidential Information of Partner.

1.7. “Customer” means any current or former Partner customer.

1.8. “Customer Information” means a Customer’s name, address, telephone number, and any other Personal Information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

1.9. “Documentation” means Enervee’s electronic descriptions of the functionality and operation of Service identified in the Order Form.

1.10. “Enervee Content” means (i) all content, including any text, copy, images, graphics, designs, photos, video, sound, derivative works or works of authorship, data, statistics, analyses, compilation, aggregation, forecasts and any similar information that is either owned, developed or licensed by Enervee; (ii) any information, improvements, updates, enhancements, business practices, or other information which Enervee may develop in the course of providing the Services; (iii) the Documentation; and (iv) Aggregated Data. For the avoidance of doubt, Enervee Content shall not include any Partner Data or Personal Information.

1.11. “Enervee Intellectual Property” means: (i) any proprietary work or system that is owned, licensed or developed by Enervee; (ii) any data independently developed or created by Enervee; and (iii) any other Enervee Content.

1.12. “Initial Term” is the initial term of the agreement, as set forth in the initial order

1.13. “Personal Information” means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular person or household. Personal Information includes, but is not limited to, the data elements listed in section 140(o)(1)(A)-(K) of the CCPA, if any such data element identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household.

1.11. “Program Result Report” means the evaluations and results of the Services to be provided by Enervee to Partner as specified in an Order Form.

1.12. “Services” means the services to be made available by Enervee that are specified in an Order Form.

1.13. “Order Form” means a document signed by both Parties identifying Services to be made available by Enervee pursuant to this Agreement.

1.14. “Third Party Data” means all content received by Enervee from a third party (other than Partner) or made available by a third party (other than Partner) through the Services, including any text, images, graphics, designs, photos, video, sound, works of authorship, data, statistics, analyses, forecasts and similar information. Third Party Data does not include Customer Information.

1.15. “Term” means the initial term plus all renewed terms

1.16. “Renewal Term” means a period following the initial term for which the agreement has been renewed.

2. ORDER FORM; ACCESS AND USE

2.1. Order Form. The Services to be provided by Enervee under this Agreement shall be set forth in one or more Order Forms, each of which is incorporated into this Agreement by reference. The initial Order Form issued under this Agreement shall be attached to this Agreement. Additional Order Forms may be entered into after the date hereof and shall be effective upon execution by both Parties. Modifications to the Services described in an Order Form shall be set forth in an additional Order Form or a Change Order executed by both Parties.

2.2. Access to Services. Subject to the terms and conditions of this Agreement, Enervee hereby grants to Partner a non-exclusive, non-transferable, non-sublicensable right to permit access to the Services for the term specified in the applicable Order Form.

2.3. Access to Partner Data. Subject to the terms and conditions of this Agreement, Partner hereby grants Enervee a worldwide, fully-paid non-exclusive, non-transferable (subject to Section 6), non-sublicensable, royalty-free license to (i) use, reproduce, adapt, modify, translate and distribute the Partner Data as set forth in this Agreement, including in order to perform the Services; and (ii) use the Aggregated Data for purposes of operating Enervee’s business, including in marketing and promoting the Services.

2.4. Brand Licenses. The Parties shall cooperate with each other to develop a mutually agreeable strategy for branding the Services, as described in an Order Form. Upon approval by Partner (i) Enervee may use the Partner Brand as described in an Order Form in order to provide the Services; (ii) Enervee may identify Partner as an Enervee customer and may further publicly disclose generalized details regarding the Services provided to Partner for marketing purposes; and (iii) Enervee may include reference to the Enervee Brand in the Services, including a statement such as “runs on Enervee” and reasonable indicia of Enervee’s copyrights and other intellectual property rights therein. Except as expressly permitted above, each Party shall have a written right of approval over the use of its Brand by the other Party, not to be unreasonably withheld.

2.5. Usage Restrictions. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Partner will not, and will not permit or authorize third parties to: (a) rent, lease, or otherwise permit third parties to use any Enervee Content, other than Customers; (b) use any Enervee Content to provide services to third parties, other than Customers (e.g., as a service bureau); (c) circumvent or disable any security or other technological features or measures of any Services; (d) create improvements, modifications or derivative works of, or reverse engineer or otherwise attempt to discover any source code of or trade secrets embodied in, the Enervee Content (including, without limitation, any Services or any software or technology used to provide the Services); (e) use the Services in a manner not authorized under the Documentation or in violation of any applicable law, rule or regulation, including any export/import laws; (f) knowingly interfere with or disrupt the integrity or performance of the Services or the data contained therein, or unreasonably burdens the infrastructure utilized to deliver the Services; and (g) attempting to gain unauthorized access to the Services or its related systems or networks.

2.6. Retained Rights; Ownership.

(i) Subject to the rights granted in this Agreement, Partner retains all right, title and interest in and to the Partner Brand and Partner Data, and Enervee acknowledges that it neither owns nor acquires and hereby disclaims any rights in and to the Partner Brand and Partner Data not expressly granted by this Agreement. Partner shall further own the Program Result Reports, provided that Enervee (a) retains ownership in the design, look and feel of such reports and any other intellectual property therein and (b) may use such reports for its internal business purposes.

(ii) Subject to the rights granted in this Agreement, Enervee retains all right, title and interest in and to the Services and Documentation, including all Enervee Intellectual Property and further including all improvements and modifications to the Services and Documentation that arise out of Enervee's performance of the Services. Partner acknowledges that it neither owns nor acquires and hereby disclaims any rights in and to the foregoing not expressly granted herein.

3. ENERVEE OBLIGATIONS.

3.1. Performance of Services. Enervee shall perform the Services in accordance with the terms and conditions of this Agreement (including each applicable Order Form) and the Documentation.

3.2. Data Protection and Disaster Recovery. Enervee shall use commercially reasonable efforts to maintain appropriate managerial, operational, and technical safeguards designed to preserve the integrity and security of the Partner Data while in its possession and control hereunder. Such safeguards shall be at least as stringent as those set forth in Exhibit B (Data Protection and Disaster Recovery). Enervee shall notify Partner within twenty-four (24) hours if it knows of any breach of this Section 3.2.

3.3. Subcontractors. Enervee is permitted to enter into an arrangement with one or more subcontractors to fulfill any of Enervee's obligations hereunder, provided Enervee gives prior Partner notice of such arrangement, provided, however, that the limitations set forth in this Section 3.3 shall not apply to the purchase of standard commercial supplies or raw materials or services purchased for the provision of services by Enervee to all of its customers generally, including without limitation general back-end and digital marketing services, so long as such subcontractors have no access to Partner Data. Enervee shall be responsible for any breach of this Agreement that is caused by a subcontractor.

3.4. Communication with Customers. As part of the provision of the Services, Enervee may need to communicate with Customers from time-to-time. Partner hereby grants Enervee the limited right to communicate with Customers as may be reasonably necessary or beneficial to provide or improve the Services, except that any

communications initiated by Enervee related to marketing activities shall be subject to Partner's approval.

3.5. Litigation Hold. In the event Partner gives Enervee written notice of a "litigation hold", then as to all data identified in such notice, Enervee shall, at no additional cost to Partner, preserve all such data pending receipt of further direction from the Partner.

3.6. Advertising. Enervee shall not refer to Partner directly or indirectly in any advertisement, news release, or publication, or use any Partner logo, seal or mark, without prior written approval from Partner.

3.7. General Indemnification. Enervee agrees to indemnify, defend, and hold harmless Partner and its elected officials, officers, directors, agents, attorneys and employees (each, an "Indemnitee") from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Enervee, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Enervee; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (d) any destruction, or unauthorized access, use, or theft of Partner Data (collectively, "cyber theft"); or, (e) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the sole negligence or willful misconduct of an Indemnitee.

3.8. Insurance. Unless otherwise approved in writing by Partner's risk manager, Enervee shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Enervee, pursuant to this Agreement: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability (\$500,000 per accident); cyber liability (\$5,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of Partner Data; (ii) data breach including theft, destruction, and/or unauthorized use of Partner Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of Partner Data; and professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate).

The Indemnitees shall be named as additional insureds in the commercial general, cyber, and excess liability policies which shall contain standard cross liability clauses. Enervee shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Enervee waives all rights of subrogation with respect to said policies. Such policies shall require that Partner be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. Partner shall have the right to request an adjustment of the limits of liability for commercial general, cyber, and excess liability, and/or professional liability insurance as Enervee's exposure to Partner increases. Enervee shall provide Partner with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide Partner with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

4. PARTNER OBLIGATIONS.

4.1. Partner Data. Partner shall provide the Partner Data to Enervee in the format and at the times specified in the Order Form. Partner shall be responsible for, and Enervee shall not be liable for, (i) ensuring that all consents have been obtained and all notices have been given, to the extent that any such consent or notice is required under applicable law, rules, regulations, agreement or Partner policies to authorize Enervee to communicate with its Customers and use Partner Data as contemplated by this Agreement and (ii) any breach of this Agreement resulting from the Partner Data, including the delivery, accuracy, completeness and consistency thereof. Partner shall make available in a timely manner at no charge to Enervee all content, graphic files, Partner Brand information and other information and resources of Partner reasonably required by Enervee for the performance of its obligations under this Agreement.

4.2. Accounts. Partner shall be responsible for the security of its Administrative Users' accounts and passwords, and shall promptly notify Enervee of any unauthorized use of any password or account or any other known or suspected breach of security. Partner shall be responsible for the acts or omissions of its Administrative Users in connection with the use of, and access to, the Services.

4.3. Feedback. Partner shall provide Enervee with prompt written notification of any comments or complaints about the Services that are made to Partner by Customers, and of any problems with the Services or their use that Partner becomes aware of during the Term. Accordingly, Enervee shall provide Partner with any feedback received by Customers and of any problems with the Services that Enervee becomes aware of during the Term.

4.4. Assistance to Enervee. Partner shall provide reasonable assistance and access to Enervee to the limited extent necessary to enable Enervee to perform its obligations under this Agreement, including any obligations with respect to an Order Form.

5. FEES AND EXPENSES; PAYMENTS.

5.1. Fees. Partner shall pay to Enervee, without offset or deduction, all fees required by each Order Form and payment schedule. Enervee shall submit invoices to Partner according to the relevant payment schedules indicated on the applicable Order Form, and each invoiced amount will be due and payable within 30 days of the invoice date. Enervee shall not suspend any part of the Services where Partner is reasonably disputing any amount due to Enervee. Any terms and conditions included in a Enervee invoice shall be deemed to be solely for the convenience of the Enervee, and no such term or condition shall be binding upon the Partner. Late payments more than 30 days past due will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

5.2. Taxes. Partner shall be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Enervee's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Partner shall make all required payments to Enervee free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Enervee shall be Partner's sole responsibility, and Partner shall, upon Enervee's request, provide Enervee with official receipts issued by the appropriate taxing authorities, or such other evidence as Enervee may reasonably request, to establish that such taxes have been paid.

5.3. Audit. Enervee shall maintain accurate records of all fees billable to, and payments made by, Partner in a format that will permit audit by Partner for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Enervee shall survive the termination of this Agreement.

5.4. Invoice Disputes. If Partner disputes in good faith any portion of an invoice or any other amount due under this Agreement, Partner shall notify Enervee in writing within 30 days after receipt of the invoice with an explanation of the nature of the dispute. Unless a written notice of a dispute as to invoiced or due amounts is received by Enervee within such 30-day period, the invoice or amount due shall be deemed correct and payable in full by Partner.

6. CONFIDENTIAL INFORMATION.

6.1. Ownership of Confidential Information. As between the Parties, all Confidential Information is and shall remain proprietary to the disclosing Party.

6.2. Mutual Confidentiality Obligations. Each Party agrees (i) to use Confidential Information disclosed by the other Party only as described herein; (ii) to protect the other Party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care, (iii) not to disclose the other Party's Confidential Information without its prior written consent to any third party except as provided in Section 6.3.

6.3. Permitted Disclosures. Notwithstanding the above, a Party may disclose the Confidential Information of the other Party (i) to such personnel, agents, consultants, attorneys or professional advisors of the disclosing Party or its prospective or actual investors, financiers, successors or assigns, if any, who have a bona fide need to access such information and are bound by confidentiality obligations at least as protective as those set forth in this Article 6 and (ii) to the limited extent required to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall if permitted by applicable law first have given written notice to the other Party and made a reasonable effort to seek protective treatment of the Confidential Information to be disclosed. It is understood that Partner is subject to the California Public Records Act (Gov. Code § 6250 *et seq.*). If a request under the California Public Records Act is made to view Enervee's Confidential Information, Partner shall notify Enervee of the request and the date that such records will be released to the requester unless Enervee obtains a court order enjoining that disclosure. If Enervee fails to obtain a court order enjoining that disclosure, Partner will release the requested information on the date specified.

6.4. Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Article 6 shall not apply to Confidential Information that: (i) is or becomes publicly available or enters the public domain through no fault of the recipient; (ii) is communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iii) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; or (iv) is independently developed by the recipient.

6.5. Terms of Agreement. Each Party shall be entitled to disclose to third parties the existence of this Agreement. Partner will cooperate to redact certain terms in the Statement of Work that Enervee may deem sensitive confidential information or trade secrets of Enervee, subject to Section 6.3 above.

6.6. Equitable Relief. In the event of a breach or threatened breach of this Article 6 by either Party, each Party agrees that remedies at law may not be adequate to protect the non-breaching Party and the non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief to enforce the provisions hereof and shall be entitled to recover from reasonable attorneys' fees incurred in connection therewith. Notwithstanding the foregoing, the remedies in this Section 6.6 shall not be the exclusive remedies for a breach of this Article 6.

7. REPRESENTATIONS AND WARRANTIES.

7.1. General Representations. Each Party represents and warrants that (i) it has the rights, power and authority necessary to enter into this Agreement; and (ii) this Agreement, when executed and delivered by the other Party, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms. Enervee represents and warrants that: (a) it is in the business of providing the Services; (b) the Services are fit for the ordinary purposes for which they will be used; (c) it acknowledges that Partner is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to Partner; (d) it knows the particular purpose for which the Services are required by Partner; (e) it is the lawful licensee or owner of the Services (excluding any Partner Data therein) and has all the necessary rights in the Services to grant the use of the Services to Partner; (f) the Services and any other work performed by Enervee hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement; (g) it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement; (h) it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards; (i) it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation; (j) it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement; (k) it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and (l) there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

7.2. Service Warranty. Enervee represents and warrants that the Services will conform in all material respects to the requirements set forth in an Order Form, Exhibit C- Service Level Agreement, and the Documentation; provided, however, that Enervee does not warrant that the Services will be error free or will operate without interruption. Partner's exclusive remedy for any breach of this Section 7.2 shall be the discounts set forth in Exhibit C, provided, however if Enervee fails to meet the Service Levels for three (3) consecutive months, Partner may opt to terminate this Agreement, including all Order Forms in accordance with Section 10.2

8. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.

8.1. Partner Data and Third Party Data. Enervee makes no representations or warranties regarding any Partner Data or Third Party Data made available in connection with the Services. Enervee is not responsible for the accuracy, reliability, legality or validity of any Partner Data or Third Party Data.

8.2. Disclaimer. Except as expressly represented or warranted in Article 7, the Third Party Data is provided "as is," and Enervee disclaims any and all other promises, representations and warranties, whether express or implied.

8.3. Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOSS OF USE, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, REGARDLESS OF THE NATURE OF THE CLAIM; PROVIDED, HOWEVER, THAT ENERVEE WILL BE LIABLE FOR THE FOLLOWING COSTS AND EXPENSES INCURRED BY PARTNER IN CONNECTION WITH THIRD PARTY CLAIMS IN CONNECTION WITH A BREACH OF SECTION 3.2 OR EXHIBIT A, NOTWITHSTANDING THAT SUCH DAMAGES MAY BE CONSEQUENTIAL IN NATURE: (1) THE COST OF PREPARING AND DELIVERING NOTICES TO AFFECTED INDIVIDUALS; (2) THE COST OF PROVIDING CREDIT MONITORING SERVICES OR OTHER CREDITS OR BENEFITS EXTENDED TO AFFECTED DATA SUBJECTS; (3) REASONABLE ATTORNEYS' FEES ASSOCIATED WITH INVESTIGATION, REMEDIATION AND RESPONSE; AND (4) LIABILITY TO THIRD PARTIES THAT PARTNER INCURS IN CONNECTION WITH THE BREACH (SUCH AS AMOUNTS PAID OR FOR WHICH PARTNER IS LIABLE TO THIRD PARTIES IN TORT OR ARISING OUT OF CONTRACTS. EXCEPT IN THE CASE OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BREACH OF CONFIDENTIALITY OBLIGATIONS, OR INTELLECTUAL PROPERTY INFRINGEMENT, THE CUMULATIVE LIABILITY OF ENERVEE TO PARTNER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE GREATER OF EITHER (A) TWO TIMES (2X) THE FEES PAID TO ENERVEE BY PARTNER DURING THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM OR (B) THE MAXIMUM POLICY LIMITS OF THE INSURANCE COVERAGES PROVIDED IN SECTION 3.8 IF SUCH CLAIM IS COVERED BY SUCH INSURANCE COVERAGE. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

9. INTELLECTUAL PROPERTY INFRINGEMENT

9.1. Defense of Infringement Claims. Enervee will, at its expense, either defend Partner from or settle any claim, proceeding, or suit ("Claim") brought by a third party against Partner alleging that Partner's use of the Services infringes or misappropriates any United States patent, copyright, trade secret, or trademark during the Service Term if: Partner gives Enervee prompt written notice of the Claim; Partner grants Enervee full and complete control over the defense and settlement of the Claim; Partner provides assistance in connection with the defense and settlement of the Claim as Enervee may reasonably request; and Partner complies with any settlement or court order made in connection with the Claim (e.g., relating to the future use of any infringing Services). Partner will not defend or settle any Claim relating to the Services without Enervee's prior written consent. Partner will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Enervee will have sole control over the defense and settlement of the Claim.

9.2. Indemnification of Infringement Claims. Enervee will indemnify Partner from and pay all damages, costs, and attorneys' fees finally awarded against Partner in any Claim under Section 9.1; all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Partner in connection with the defense of a Claim under Section 9.1 (other than attorneys' fees and costs incurred without Enervee's consent after Enervee has accepted defense of the Claim); and all amounts that Enervee agrees to pay to any third party to settle any Claim under Section 9.1.

9.3. Exclusions from Obligations. Enervee will have no obligation under this Article 9 for any infringement or misappropriation to the extent that it arises out of or is based upon use of the Services by Partner for purposes not intended or outside the scope of the limited right to use the Services granted to Partner; Partner's failure to use the Services in accordance with instructions provided by Enervee, if the infringement or misappropriation would not have occurred but for

such failure; or any modification of the Services not made or authorized in writing by Enervee where such infringement or misappropriation would not have occurred absent such modification.

9.4. Conditions to Infringement Indemnity. Enervee's infringement indemnity obligations under this Article 9 are conditioned on Partner's agreement that if the applicable Service becomes, or in Enervee's opinion is likely to become, the subject of a Claim covered by this Article 9, Partner shall permit Enervee, at Enervee's option and expense, to either procure the right for Partner to continue using the affected Service or replace or modify the same with a non-infringing functional equivalent. If the foregoing alternatives are not available to Enervee on terms that, in its judgment, are reasonable, Enervee shall have the right to require Partner to cease using the affected Service in which case Enervee shall refund to Partner that portion of the fees paid for Services not yet provided.

10. TERM AND TERMINATION.

10.1 Term. The term of this Agreement (the "Term") will commence on the Effective Date and will continue until the date on which all Services contemplated under all Order Forms have been completed, unless earlier terminated in accordance with this Article 10. Any termination of an Order Form shall not result in termination of any other Order Form(s) or this Agreement. However, any termination of this Agreement shall result in termination of all then pending Order Form(s).

10.2 Termination for Breach. Either Party may terminate this Agreement in the event of a material breach by the other Party by providing written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party shall have a right to cure such breach within 30 days of receipt of such notice and this Agreement shall terminate in the event that such cure is not made within such 30-day period.

10.3 Termination without Cause. After one (1) year, Partner may terminate this Agreement and/or any Order Form(s) at any time and for any or no reason upon ninety (90) days' written notice to Enervee. In the event of such termination, Enervee shall be entitled to 20% of the unpaid fees due for the remainder of the Term if the Agreement had not been terminated.

10.4 Transition. Enervee will provide to Partner and / or to the consultant selected by Partner ("Successor Consultant") assistance reasonably requested by Partner to effect the orderly transition of the Services, in whole or in part, to Partner or to Successor Consultant ("Transition Services") following the termination of this Agreement, in whole or in part. All applicable terms and conditions of this Agreement shall apply to the Transition Services. Unless otherwise instructed by Partner, upon expiration or termination of this Agreement and/or any Order Form(s), Enervee will do the following at no additional charge: (a) within ten (10) business days, meet and confer with Partner and discuss the manner and method Enervee will return all Partner Confidential Information and Partner Data to Partner, it being agreed that such material shall be provided to Partner in human readable format unless otherwise specifically approved in advance and in writing by Partner; (b) continue to provide the Services to Partner until the effective date of such expiration or termination provided Partner continues to pay for the Services through such date; (c) wind down the Services in a professional and cost-effective manner, and (d) within thirty (30) days, refund to Partner all pre-paid, unused fees. This Section shall survive the termination of this Agreement.

10.5 Suspension of Access. Enervee may suspend access to any or all of the Services in the event any amount due under this Agreement is not received by Enervee within 30 days after it was due and Enervee has provided Partner with written notice (in addition to the original invoice) of the past due amount.

10.6 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement upon written notice to the other Party, in the event: (i) the other Party becomes insolvent or unable to pay its debts when due; (ii) the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.; or (iii) the other Party discontinues its business.

10.7 Effect of Termination. Upon any termination of this Agreement: (i) Partner shall immediately discontinue all use of the Services and any Enervee Confidential Information; (ii) Partner shall delete any Enervee Confidential Information from Partner's computer storage or any other media including, but not limited to, paper files and online and off-line libraries; (iii) Enervee shall, at Partner's direction return or delete any Partner Confidential Information and Partner Data (to the extent allowable by law) from Enervee's computer storage or any other media including, but not limited to, paper files and online and off-line libraries; (iv) each Party shall discontinue use of the other Party's Brand; and (v) Partner shall promptly pay to Enervee all amounts due and payable hereunder. This Section 10.5 shall only require each Party to delete Confidential Information from off-site physical back-up in the ordinary course of business, provided that such Confidential Information shall remain subject to the terms of Article 6.

10.8 Survival. The provisions of Articles 1, 2.3, 2.5, 2.6, 5, 6, 7, 8, 9, 10.4, 10.7, and 11 shall survive the termination of this Agreement.

11. MISCELLANEOUS.

11.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither Party shall be bound by any conditions, inducements or representations other than as expressly provided for herein. All terms of use, terms of service, end user license agreements, shrink-wrap, click-wrap and browse-wrap terms of any kind that may accompany the Service or be required to be clicked, accepted or acknowledged before a User may access or use the Service are specifically refused by Partner; accordingly, such terms are expressly excluded from and superseded by this Agreement.

11.2 Independent Contractors. In making and performing this Agreement, Partner and Enervee act and will act at all times as independent contractors, and nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

11.3 Notices. All notices relating to this Agreement shall be in writing and addressed as follows:

Enervee Corporation
10000 Washington Blvd, 6th Floor
Culver City CA 90232
Attention: General Counsel
Email: legal@enervee.com

Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Attention: Chief Executive Officer
Email: girish@svcleanenergy.org
With CC to: don.bray@svcleanenergy.org

Notice will be deemed given upon: (i) personal delivery or delivery confirmed by an overnight courier, (ii) the second business day after

mailing by certified U.S. mail or upon confirmation of delivery by the U.S. Postal Service or (iii) recipient's acknowledgement of receipt if sent by email.

11.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

11.5 Assignment; Delegation. Neither party may assign its rights, duties, or obligations under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld or delayed, except that a party may assign this Agreement without the other party's consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees to assume and fulfill all of, or otherwise is bound by, the assigning party's obligations under this Agreement.

11.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

11.7 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions of this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

11.8 Waiver. No waiver under this Agreement will be valid or binding unless confirmed in writing by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

11.9 Force Majeure. Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, war, acts of terror, earthquake, riot, fires, labor disturbance, floods, epidemics, failure of public utilities or public transportation systems, Internet disturbance, denial of service attacks or acts of governmental bodies, such failure or delay will not be deemed to constitute a breach of this Agreement, provided that if such Party is prevented or delayed from performing for more than 90 days, the other Party may terminate this Agreement upon 30 days' prior written notice. Without limiting the foregoing, Enervee shall not be liable for any delay in performing or failure to perform its obligations hereunder as a result of Partner's delays, acts or omissions.

11.10 Governing Law; Dispute Resolution. This Agreement will be governed by and interpreted in accordance with the laws of the State of California with venue in Santa Clara County.

11.11 Conflict Of Interest. Enervee warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would violate any conflict of interest statutes of the State of California applicable to Enervee's services under this Agreement, including the Political Reform Act (Gov. Code § 81000 *et seq.*) and Government Code Section 1090. Enervee shall incorporate a clause substantially similar to this section into any material subcontract that Enervee executes during the Term in connection with any subcontractors furnishing services primarily for the performance

of this Agreement (and excluding any subcontractors or vendors that furnish services for Enervee and its customers in general). Enervee understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Enervee to make certain governmental decisions or serve in a staff capacity, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

11.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. A copy of this Agreement delivered by email or other electronic means shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.13 Interpretation. The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement. The terms "include", "includes" and "including" shall be deemed followed by the words "without limitation," and the term "or" is not exclusive. The words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

11.14 Attorneys' Fees and Costs. In any litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.

11.15 Cooperation. Where agreement, approval, acceptance, consent or similar action by either Party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each Party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each Party may properly accomplish its obligations and responsibilities hereunder. Enervee will cooperate with any Partner consultant performing services, and all parties supplying hardware, software, communication services, and other services and products to Partner.

11.16 Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.

11.17 Cumulative Remedies. All rights and remedies of Partner herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Enervee for the enforcement of this Agreement, and temporary and permanent injunctive relief.

11.18 No Recourse against Constituent Members of Authority. Partner is organized as a Joint Powers Partner in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement, and is a public entity separate from its constituent members. Partner shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Enervee shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Partner's constituent members in connection with this Agreement.

11.19 Non-Discrimination. In the performance of this Agreement, Enervee shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

11.20 Final Payment Acceptance Constitutes Release. The acceptance by Enervee of the final payment made under this Agreement shall operate as and be a release of Partner from all claims and liabilities for compensation to Enervee for anything done, furnished or relating to Enervee's work or services. Acceptance of payment shall be any negotiation of Partner's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by Partner shall not constitute, nor be deemed, a release of the responsibility and liability of Enervee, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by Partner for any defect or error in the work prepared by Enervee, its employees, subcontractors and agents.

11.21 Partner's Rights to Employ Other Consultants. Partner reserves the right to employ other consultants in connection with the subject matter of the Services.

11.22 Inserted Provisions. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

11.23 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

11.24 Inclusion of Non-Participating Agencies. Enervee agrees to extend the terms of this Agreement, inclusive of a non-profit discount on license fees, to other interested community choice energy programs, with such non-profit discounts subject to the scope of services (including but not limited to duration of contract, modules, marketing campaigns, etc.) requested by such non-profit entities. While this clause in no way commits these agencies to contract with Enervee, nor does it guarantee any additional orders will result, it may allow other agencies, at their discretion, to make use of Partner's competitive process (provided said process satisfies their own procurement guidelines) and enter into a contract directly with Enervee. All contracts entered into by other agencies shall be understood to be transactions between that agency and Enervee; Partner shall not be responsible or liable in any manner for any such contracts.

[End of terms.]

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

Recommended for Approval:

CLIENT

DocuSigned by:
Signature: Don Bray
23AB666D5413464...

Name: Don Bray

Title: Director of Account Services & Community Relations

Date: 4/14/2020

Recommended for Approval:

CLIENT

DocuSigned by:
Signature: Don Eckert
10C84C9C59134BD...

Name: Don Eckert

Title: Director of Finance & Administration

Date: 4/14/2020

Approved

ENERVEE

DocuSigned by:
Signature: [Signature]
0B474A9B796A46B...

Name: Luis I Castro

Title: Director of Growth

Date: 4/15/2020

Approved

AUTHORITY

DocuSigned by:
Signature: Girish Balachandran
5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: Chief Executive Officer

Date: 4/15/2020

APPROVED AS TO FORM

COUNSEL FOR AUTHORITY

DocuSigned by:
Signature: Gregory W. Stepanicich
9E728D9E914F493...

ATTEST:

AUTHORITY CLERK

DocuSigned by:
Signature: Andrea Pizano
D0629733BB994BA...

EXHIBIT A

Data Protection and Disaster Recovery

This Exhibit A sets forth the safeguards that Enervee has in place in order to protect the confidentiality and integrity of Partner Data held by Enervee. Enervee shall maintain data protection and disaster recovery standards at least as stringent as this Exhibit A during the term of the Agreement.

A. DATA PROTECTION AND SECURITY:

Enervee shall have in place information security safeguards that are designed to conform to or exceed industry standard practices regarding the protection of the confidentiality, integrity and availability of Partner and customer information. These information security safeguards (the “**Information Security Program**”) shall be materially consistent with, or more stringent than, the safeguards described in this Exhibit.

Overview. Enervee uses a defense-in-depth strategy designed to secure Personal Information and usage and billing data received from Partner or its Customers (“**Customer Data**”). This is achieved by reference to the National Institute of Standards and Technology (NIST) Risk Management Framework (to include the recently released NISTIR 7628 Guidelines for Smart Grid Cyber Security) as the foundation of our Information Security Program. Managerial, operational, and technical, security controls are implemented by Enervee to protect the confidentiality, integrity, and availability of Partner and customer data are derived from the NIST SP 800-53 and NISTIR 7628 control families.

Compliance with Personal Information Laws. Enervee shall process Personal Information disclosed by Partner to Enervee in connection with the Services (“**Partner Personal Information**”) in compliance with Personal Information Laws and shall not (1) sell, as that term has been defined in the CCPA, Partner Personal Information, or (2) retain, use or disclose Partner Personal Information (i) for any purpose other than for the specific purpose of performing the Services, or (ii) outside of the direct business relationship between Enervee and Partner, Enervee hereby certifies that Enervee understands the restrictions set out in this Exhibit A regarding Partner Personal Information and will comply with them.

Data Storage. Customer data is stored at independently verified SSAE-16 / SOC I Type II certified Tier-III data centers. The data centers’ physical and environmental security includes industry-leading network hardening and active monitoring, digital security video surveillance, 24/365 on-site security staff, and biometric access control.

Role-Based Logical Access Control. Enervee employs role-based access controls to servers containing Customer Data. Authorized employees must use individual account and authentication credentials to gain access to Customer Data. Enervee controls access to back end servers through authentication handled with key-based SSH sessions. Authorization is done on a least privilege model.

Information Classification and Handling. Enervee classifies information assets using specific sensitivity labels and handling procedures so that appropriate security controls are applied to Customer Data.

Secure Data Transfer. Enervee requires that all Customer Data containing Personal Information transmitted to or from the Enervee information system use approved secure transfer processes such as Enervee’s secure file transfer protocol (SFTP) and Enervee’s Data Transfer Specification. Data traversing the SFTP connection is authenticated and encrypted during transmission.

Secure Web Communications. Enervee’s Website Portal and Customer Service Application utilize HTTPS for securing web server to web browser communications using a Transport Layer Security (TLS) encrypted 256-bit certificate signed by an approved Certificate Authority. This establishes the encryption of the session, designed to protect the transmitted data between the end-user and the application.

Network and Security Monitoring. Enervee’s infrastructure incorporates firewalls, intrusion detection systems, intrusion prevention systems,

vulnerability management tools and other technologies designed to monitor for network security events.

Vulnerability Assessments. Enervee performs periodic internal and external web application and network vulnerability assessments that include the use of independent third-party assessors as part of its continuous monitoring program to assess the application and operation of its security controls. The scope of these audits includes assessment of compliance with Open Web Application Security Project (OWASP) Top 10 Web Vulnerabilities (www.owasp.org). Enervee will use commercially reasonable efforts to promptly install applicable security patches and updates.

Website Portal Security Controls and Procedures:

User Authentication. Access to the Enervee Website Portal and Customer Service Application requires a valid unique user ID and password combination, along with 2 factor authentication, which are encrypted via TLS while in transmission.

Security Controls: The Enervee Website Portal and Customer Service Application include the following security controls:

- Unique user IDs so that activities can be attributed to the responsible individual.
- User lock-out controls after consecutive failed login attempts.
- Controls to terminate a User session after a period of inactivity.
- Password complexity requirements.

Security Procedures, Policies and Logging: The Enervee Website Portal and Customer Service Application are operated in accordance with the following procedures to enhance security:

- User access log entries will be logged
- Logging will be kept for a minimum of 90 days.
- Logging will be kept in a secure area to prevent tampering.
- Passwords are reset to a random value (which must be changed on first use) and delivered automatically via a secure delivery method to the requesting user.

Viruses: The Enervee Platform has been designed to detect and quarantine viruses on both employee computers and servers.; All email attachments are scanned for viruses. Employee computers are scanned daily for viruses. All Linux servers are scanned weekly for viruses.

Incident Response. In the event of a security breach, Enervee’s System Administration Team and Security Team will perform a risk-based assessment of the situation and develop appropriate mitigating strategies in accordance with Enervee incident response procedures, which include contacting the Partner.

Security Plan Changes. Enervee periodically updates and implements enhancements to the Information Security Program, and may add or modify security controls, procedures, policies and features. These additions and modifications will not make the Information Security Program less protective than it was on the effective date of the Agreement in any material respect.

Hosted Services. The Enervee Platform utilizes industry-leading hosted storage and application services, such as Amazon Web Services, that

employ security practices that meet or exceed the practices described in this exhibit. For more information on Amazon Web Services security practices, see <http://aws.amazon.com/security/security-resources>.

B. DISASTER RECOVERY:

Production Site Recovery Methodology:

Overview: Enervee's Primary data centers provide production services for the Enervee Platform and geographically separate disaster recovery ("DR") data center(s) provide(s) recovery services if needed as a result of a disaster. All data received from Partner or Customers for purposes of the Enervee Platform is maintained in both the primary data centers and the DR data center(s).

Hardware: All data centers utilize carrier-grade components designed to support high level of availability and performance. Extensive use of high availability servers and network technologies, combined with multicarrier and carrier-neutral network strategy, mitigate the risk of single points of failure and provide a highly resilient environment.

Data Replication / Backups: Enervee performs remote data replication of all production data to a geographically remote DR site.

Specifically, nightly backups are performed at all the production data centers and backups are made at Enervee's remote DR data center as follows:

- Disk Backup Schedule- Weekly Full/Nightly Incremental
- Site to Site Backup Schedule –Nightly

Should there be a catastrophic failure at a primary data center or another type of disaster affecting that facility, Enervee would initiate its disaster recovery process. Recovery would be performed at Enervee's primary data centers if the recovery could be completed within Enervee's recovery time objective ("RTO") and recovery point objective ("RPO"). If recovery could not be completed at Enervee's primary data center within the RTO and RPO, recovery would be performed at Enervee's remote DR data center(s).

Data Center Recovery Planning Progress:

As a part of developing a viable disaster recovery plan and program for the production environment and platforms, Enervee conducts periodic disaster recovery exercises.

The scope of the disaster recovery exercise is to validate the ability to recover production data from a primary data center to the DR data center utilizing developed operational and disaster recovery procedures and documentation. Key elements of proof currently include:

- Network access
- Hardware and / or server component accessibility.
- Application accessibility
- Data currency (RPO)
- Plan elements are reviewed and updated
- Task, script and procedures remain current

Data Center Facilities:

Enervee services run from enterprise-grade data centers. Cameras provide interior and exterior surveillance, monitored by onsite security guards around the clock. Various combinations of Card-key access, PIN-based & bio-metric system restrict access to and within the data center. Electrical power, telecommunications, and environmental systems (cooling, fire suppression, etc.) are redundant with uninterruptible power supply units, generators, and water supplies available for emergency use. Heat, smoke, fire detection and suppression systems are strategically located throughout the facility. Building logic control systems monitor temperature, humidity, and other environmental conditions. Notification via email/paging mechanisms and onscreen dashboards display all critical functions and any alarm conditions.

Power:

Enervee's solution is designed to offer an uninterrupted power supply while the load is being transitioned to emergency/generator power in the case of a utility outage. Both the primary and the DR data centers have power capacity to support the load for the entire facility for a minimum of 48 hours on emergency generator power with multiple vendors to supply fuel as required. In the event of a critical data center facility service impacting failure or disaster, Enervee has the ability to transition to a data replicated, geographically diverse DR data center.

**EXHIBIT B:
SERVICE LEVEL AGREEMENT****Service Availability**

Enervee will maintain a Monthly Uptime Percentage of at least 99% during each month. Here "Monthly Uptime Percentage" is calculated by subtracting from 100% the percentage of minutes in which the Enervee Platform was unavailable, not including any Enervee scheduled or emergency maintenance periods. In the event that Enervee does not meet this service level commitment, Partner will receive a discount for that billing cycle according to the rules below. These discounts will constitute Partner's sole remedy, and Enervee's sole liability for any failure to meet Enervee's service level commitment.

Less than 99% but equal to or greater than 97.0% monthly uptime:

3% discount

Less than 97.0% monthly uptime:

5% discount



EXHIBIT C:
SOW ENERVEE APPLIANCES CHOICE ENGINE

1. Appliances Choice Engine

The Appliances Choice Engine is a custom, fully automated appliance and product recommendation platform. Appliances brings together all the data Customers need to make an informed decision - pricing, features, efficiency, popularity and user reviews - into the single most comprehensive selection of products and information available online.

Appliances is designed to help Customers quickly and easily find the most efficient and therefore cost-saving appliances that meet their unique requirements. It drives continuous engagement and positions the Partner as a trusted advisor in the consumer's appliance purchase decision. Appliances leverages the data pulled from the largest online retailers and manufacturers each day and compiles this information into a simple product card displaying the most important shopping information for consumers in a mobile friendly way.

Enervee will create, operate and manage a geo-targeted, Partner-branded version of the Choice Engine platform that has a fully responsive and mobile-first design. The Choice Engine will be hosted by Enervee's hosting service (provided by Amazon Web Services) and will be available on the efficientchoice.com domain.

Consumer-facing information and services on the site will include:

- Products, in the selected categories by Partner, for sale through online retailers updated daily. During implementation SVCE can choose which categories to include from Enervee's catalog.
- An "Enervee Score" rating the energy efficiency for every product derived according to Enervee's scoring system.
 - Enervee commits to working with SVCE and other Enervee customers to incorporate additional environmental attributes into the Enervee Platform, including factoring in the carbon intensity of the appliance's energy source (electricity or natural gas), and the ability of the appliance to be networked and utilize utility-provided information such as time of use rates, dynamic pricing, and demand response signals.
- Online sales offers, with pricing, and user reviews from Amazon.com, Best Buy, Home Depot, Sears, Lowe's and many others.
- User reviews are aggregated across all participating retailer into a single 5-star score.
- "CLEARCOST" which adds estimated energy consumption costs to the lowest online listed purchase price for every product. Clear Cost is based on average Client residential rates as provided by Client.
- "YOUSAVE" which estimates the lifetime energy cost savings of a product compared to the baseline model of that size class.
- Leverage an SVCE-owned and provided URL at an extra cost. The included standard URL is partner.efficientchoice.com/org



- Leverage an SVCE-provided marketplace name
- Apply branding leveraging SVCE brand guidelines following the platform configuration options defined in the implementation workbook
- Manage an appliance and equipment catalog including a variety of large and small appliances; Enervee may offer additional product categories in the future that SVCE can decide to add to the Marketplace Application.
 - All product categories, including additions and deletions, to be approved by SVCE
 - New categories will be offered to SVCE as they become available, as optional categories to be included in the SVCE platform. These new categories will have an implementation fee that shall be agreed upon as the categories are requested by SVCE.
- Provide option for customers to received quotes from local installers through HomeAdvisor with Contractor add on
- Enable referral purchase capabilities for products and services, with communication of SVCE rebates and incentives available and how to redeem them. SVCE must provide rebate criteria in the implementation workbook. New rebate setup requests after launch incur fees.
- Coordinate with other SVCE vendors/partners to allow for integration between solutions and applications, as appropriate and mutually agreed to (e.g., embedding links to other websites, creating site content, sending customer communications, etc.). Some requests may require additional fees. In that case any fees will be identified and approved in writing by SVCE before the work is done.

DELIVERABLES	DESCRIPTION
Service	Enervee will set up and customize a geo-targeted, Partner-branded version of Enervee Appliances.
ENERVEE APPLIANCES PLATFORM	
Mobile First Design	Mobile first design with product cards. Each card gives the visitor key information on the price, user reviews and efficiency of a product.
Features and Functions	Favorite a product, save a search, sort and filter product listing, click to retailer offer, view product specifications, view product reviews, FAQs
Enervee Score®	Enervee Appliances provides a unique scoring system from 0-100, the Enervee Score, for electronics, appliances and lighting. The dynamic scoring is designed to help shoppers make a better decision when it comes to choosing their next appliance by comparing the energy efficiency between comparable models. (https://enervee.com/score/)
CLEARCOST	CLEARCOST shows the projected total costs of owning an appliance over its useful lifetime based on purchase price, Partner energy rates and usage profile.



Accessibility	Enervee builds its products in accordance with ADA requirements and shall maintain website in a manner accessible to persons with disabilities.
New Categories	As new categories become available for the Appliances Choice Engine, Partner will be able to add those categories to their Appliances Choice Engine. Adding new categories generate additional costs to the original scope of the platform, which result in a \$7,500 (non-profit pricing) implementation fee and a \$5,000 (non-profit pricing) annual fee.
SET UP AND CUSTOMIZATION	
Standard branding and configuration options for Enervee Appliances are outlined through an Implementation Workbook (EXHIBIT G). High-level considerations are outlined below:	
Branding	Enervee incorporates branding elements throughout Homepage and other Enervee Appliances pages to ensure branding alignment including name, logos, color palette, images, default Enervee Appliances elements and copy. Partner provides brand guidelines.
Technical	Set up platform, platform data management and profile data management Quality testing before deployment
Hosting	Enervee hosts the Appliances site at a custom URL. i.e. partnername.efficientchoice.com.
Tracking	Set up tracking of user activities on Enervee Appliances. Partner integrates re-marketing pixel.
Region, Language, Currency	Partner Region, US English, US Dollar



**EXHIBIT D:
SOW ENERVEE CHECKOUT**

1. Checkout

Selling directly to customers can make sense when consumers want to make a quick decision, or the utility wants to supply the product. For these situations, there's Enervee Checkout - an integrated direct-sales application. The Checkout API extension allows the fastest and most convenient way to purchase products with rebates instantly through the Appliances Choice Engine. The Checkout functionality allows active and validated customers to purchase Partner-approved products with an instant rebate discount applied at the time of purchase.

- Source, secure, and manage all participating product and service suppliers, manufacturers, and distributors
 - Identify, contract, price, and manage any order fulfillment logistics and related system functionalities as required
 - Enable inclusion of products sourced and fulfilled via SVCE as mutually agreed. New and non-existing categories requested to be sold via Checkout, might incur additional fees, depending on the type of category.
- Source, secure, and manage product fulfillment vendor(s) for direct-purchase products and services
 - Act as an affiliate referrer for certain products or services
 - Send all order confirmations via email to customers with branding as approved by SVCE
- Enable access to available manufacturer promotions as mutually agreed
- Track and monitor rebates issued to customers

DELIVERABLES	DESCRIPTION
Service	Enervee will set up and customize a geo-targeted, Partner-branded version of Enervee Checkout
ENERVEE CHECKOUT	
Setup	Enervee will send a product list of energy-star certified products that will be available for purchase for approval. Any changes to the initial set up are defined as change requests and will be charged separately based on efforts. Changes only happen with SVCE's approval of scope and costs. Efforts are defined as the number of hours required to make any changes, new requests or additional software development. Enervee's hourly rate for changes, requests or software development is \$200/hr.



<p>Categories</p>	<p>The initial set-up will include up to three categories with products available to purchase: Thermostats, Lightbulbs and Power strips. Other categories may be added at a later date by Enervee with SVCE's approval. The lightbulbs category will consist of minimum 15 energy star light bulbs products available for purchase. The thermostats category will consist of minimum 8 energy star thermostats. The Power strips category will consist of a minimum of 2 energy star brands.</p> <p>This is all dependent on the utilities rebate requirements. Any changes to the initial set up like additional categories are defined as change requests and will be charged separately based on efforts. Changes only happen with SVCE's approval of scope and costs. Efforts are defined as the number of hours required to make any changes, new requests or additional software development. Enervee's hourly rate for changes, requests or software development is \$200/hr.</p>
<p>Products</p>	<p>Enervee maintains the product catalog including price updates. Adding products or taking products out are defined as change requests and will be charged separately based on efforts. SVCE is able to define the products to be included in the marketplace before the platform's launch at no costs. Any other changes to product catalog shall be charged based on effort. Changes only happen with SVCE's approval of scope and costs. Efforts are defined as the number of hours required to make any changes, new requests or additional software development. Enervee's hourly rate for changes, requests or software development is \$200/hr.</p>
<p>Shopping Experience</p>	<p>Through the Checkout API, items added to the cart from Enervee Appliances Choice Engine are transferred to a co-branded Checkout page hosted by one of our distributors. The entire shopping experience remains seamless and efficient.</p>
<p>Order Experience</p>	<p>Customers will add items to their cart on Enervee Appliances Choice Engine. The customer will then proceed to Checkout and must complete a verification to be eligible for the instant rebate. If eligible, they will receive the rebate instantly, if not, they can continue to purchase at full cost. Our distribution partner will receive and fulfill these orders from the Enervee Appliances Choice Engine via the API.</p>
<p>Handling of Returns</p>	<p>Customers will contact the order support phone number (at an extra cost) and/or email listed on the Checkout page, Support page, and/or order packing slip with any inquiries regarding their order. The customer is responsible for all costs associated with returning orders not related to warehouse errors, damaged -in-shipment products, or defective items. These costs include restocking and/or shipping fees.</p>
<p>Rebate Invoicing</p>	<p>Enervee will invoice Partner at the beginning of every month for all rebates paid via Checkout. Enervee's invoice will come with an attached report of every transaction made through Checkout, with detailed information of which products were sold and to whom those products were sold to.</p>



SET UP AND CUSTOMIZATION

High-level considerations are outlined below:

Technical	Set up platform, platform data management quality testing before deployment
Customer Validation	<p>Enervee and Partner agree to kick-off Customer Validation via zip code matching.</p> <p>Enervee and Partner will work together to implement flat-file integration for customer validation. Enervee needs to have a database of previous claimed rebates to prevent double dipping. The claim validation process will also be agreed upon and defined jointly by Enervee and Partner to prevent duplicate rebate payments and enforce rebate business rules.</p> <p>Other Customer Validation forms may be agreed upon at a later date.</p>
Hosting	Enervee hosts the Checkout functionality under a custom URL i.e. efficient.partername.com
Tracking	Set up tracking of user activities during the Checkout process.
Region, Currency and Language	Partner Region, US English, US Dollar



EXHIBIT E:
IMPLEMENTATION RESPONSIBILITIES

1. Implementation Responsibilities Enervee

During Enervee Appliances implementation, Enervee will:

- a) Provide Partner with Enervee team necessary to successfully implement Appliances platform as defined.
 - Develop a detailed project schedule along with SVCE staff and contractors
 - Hold or participate in weekly check in meetings on project progress
 - Develop scripts and provide data for user acceptance testing
 - Fix all reported bugs impacting site performance within five (5) working days or as quickly as possible
 - Perform testing with an automated and manual process, followed by a regression test that gets run prior to each release (using Rainforest QA)
 - Provide access to the Enervee Partner Portal and online dashboard
- b) Implement services defined for Partner
- c.) Provide Choice Engine Implementation Workbook
- d) Discuss and finalize Partner's design and implementation details
- e) Guide Partner through program branding and content considerations
- f) Set up Enervee's Engage Program (if service is included)

The Enervee team roles and descriptions are listed here for reference. An individual may assume one or more roles.

Customer Success Manager

Primary point of contact for all pre-implementation activities and after Enervee Appliances Launch. Focused on ensuring our Partners achieve their desired outcomes. Responsible for day to day contact, marketing decisions, platform performance tracking and optimization, Enervee impact surveys and Enervee support for independent impact assessment and strategic planning. Also responsible for implementing Enervee Appliances scope, project scheduling, resource management, technical dependency management, engineering coordination and test coordination. After Program launch, the Customer Success Manager will deliver results reports, drive ongoing optimization efforts, and closely monitor key milestones.

Customer Service Manager

Primary point of contact for customer support functions

Engage Program Manager

Primary point to advise and manage Enervee Engage Program (if service is included)

2 Implementation Responsibilities Partner

During Enervee Appliances implementation, Utility partner will:

- a) Provide Enervee with Partner team as described below
- b) Provide Enervee with all necessary information
- c) Make decisions regarding corporate branding and content strategies associated with Enervee



solution

Partner is required to provide the resources to work on the implementation with the Enervee team. The responsibilities of these roles are defined in the table below. An individual may assume one or more roles. Partner must identify the individuals to assume these roles and communicate this information within 30 days of the execution of the SOWs.

d) Engage a third-party evaluation company prior to the launch of the Appliances site. The evaluator will quantify the efficient purchases influenced by the Appliances platform and the resulting gross and net energy savings resulting from those purchases, using a method consistent with regulatory requirements.

e) Conduct any regulator outreach that may be required to obtain regulatory approval to claim market-based savings post-pilot.

Project Owner

Primary point of contact for Enervee Appliances. Responsible for general communication, pilot/control selection, measurement and verification. Will have the authority to grant all approvals, assemble Partner's implementation team, execute all documents and take all actions relating to the program on behalf of Partner.

Marketing Manager

Primary point of contact for Enervee Appliances with regard to marketing activities and needs. Responsible for making all content and branding decisions for the Partner.

Technical Manager

Primary point of contact for Enervee Appliances with regard to technical activities and needs. Responsible for technical decisions and actions required to integrate Enervee Appliances with Partner's existing website.



**EXHIBIT F:
IMPLEMENTATION TIMELINES**

Implementation Timelines

Enervee is using a phased approach for developing Choice Engine platforms. Each phase will have clearly defined objectives and deliverables. To ensure that all participating stakeholders at Partner and Enervee are in synch with the work stream for each phase of the project, we will have status calls at least once per week during customization of the platform.

1. TIMELINE APPLIANCES

Week 1-2, following contract signing

KICK OFF

Define Goals & Timing

Provide Content & Branding Guidelines

Partner delivers all Configuration Workbook responses

MILESTONE I: Configuration Workbook

Week 3-6, following contract signing

CUSTOMIZATION PHASE

Customize Design and Branding

Integration of electric and gas rates

Set up Testing Environment

FAQs, Terms & Conditions, Privacy Policy

MILESTONE II: Completed development of Partner Choice Engine in test environment

Week 7-8, following contract signing

TESTING

Use Cases

Content & branding check

Fixing of any identified bugs

MILESTONE III: Sign off on launch

Week 9, following contract signing

MILESTONE IV: Go live

2. TIMELINE CHECKOUT

KICK OFF, Week 1-2, following contract signing

Define Goals & Timing

Partner delivers Customer Flat File list

Rebate invoicing scheduling

MILESTONE I: Deliverables sent to Enervee

CUSTOMIZATION PHASE

Set up Testing Environment



MILESTONE II: Completed development of Partner Choice Engine in test environment by **Week 3-6, following contract signing**

TESTING

Use Cases

Content & branding check

Fixing of any identified bugs

MILESTONE III: Sign off on launch by **Week 7-8, following contract signing**

MILESTONE IV: Go live by **Week 9, following contract signing**



**EXHIBIT G:
OPERATIONS AND MAINTENANCE**

DELIVERABLES	DESCRIPTION
Partner Choice Engine	Enervee will operate and manage the customized version of the Enervee Appliances platform after its deployment. All model, brand and price information, data sources and the Enervee Score will be continuously updated.
Surveys	Enervee will conduct online surveys to Customers who have visited Enervee Appliances. The surveys will ask questions about the customer shopping journey and what impact Enervee Appliances had on his/her purchase decision. Survey results will be shared with Partner.
Data Management	Regular quality testing, updates to Enervee Score and updating of new appliance models
Technical Support	Regular performance checks; issues related to technical support and maintenance are defined in EXHIBIT A, Data Protection and Disaster Recovery
Hosting	Hosting of Enervee Appliances platform and Enervee Appliances data
Dashboard Reporting	Enervee provides access to an online reporting dashboard with a number of detailed performance data elements as part of the SaaS agreement. Key metrics are tracked around site traffic and engagement. Enervee's Customer Success Manager will do quarterly business reviews (QBRs) with Partner to discuss progress and results of the platform and surveys.
Software Upgrades	Standard upgrades of the Choice Engine software (e.g. new functionality, etc) are included. Custom functionality may have additional costs.
Supported browser versions	For both desktop and mobile browsers, Enervee supports the latest two version of all major browsers (Chrome, Safari, Firefox & Edge) and up to IE11 for Internet Explorer.

3. CUSTOMER SERVICE

For Enervee, providing excellent customer service means going the extra mile in making sure a customer is happy and satisfied with a company's products or services. It also involves providing service to a customer in a timely, pleasant manner. Enervee's agents are well trained, experienced, and sitting in the same office as the Choice Engine data team for having an effective exchange of product, rebate, and platform information.

- Provide service level agreement for customer care channels to be mutually agreed upon with SVCE
- Handle all customer inquiries, via email or phone, that relate to the operation of the Marketplace Platform, including website and webpage assistance, product and service inquiries, fulfillment, charges, and any other inquiries directly relating to the Marketplace Application



- i. Redirect any non-Marketplace-Platform-related calls or emails to SVCE, or the appropriate party
 - ii. Manage all customer inquiries related to the Marketplace Platform redirected from SVCE to Enervee customer support service
- Operate call center for Marketplace Platform, including live chat and email support, from 9 am – 5 pm Pacific Standard Time, Monday through Friday
 - Handle all customer inquiries relating to product installation or features and redirect to product manufacturer's or other third-party affiliates on an as needed and as determined basis
 - Handle all product returns and product return customer communications via Enervee's fulfillment partner.
 - Upon Client request, provide training to SVCE customer service staff or contractors so they are capable of addressing customer questions, including:
 - One (1) free training session that includes how to use the Marketplace Platform
 - One (1) free training session that includes customer service training to both promote the program and assist with common inquiries

3.1 PHONE SUPPORT SERVICE (OPTIONAL AT EXTRA COST)

Enervee offers optional live phone support center, which takes inbound calls for questions on products, assisting with rebate applications, or regarding the Choice Engine functionality.

3.2 LIVE PHONE SUPPORT & VOICEMAIL

- Enervee guarantees live phone support for all business days in the year with an unlimited number of minutes per month.
- Enervee will need thirty (30) days to set-up phone support, which includes training sessions for support agents, the set-up of the system with a dedicated number and the development/approval process for phone scripts and/or guides.
- Customers can call the dedicated toll-free number from 9:00 AM to 5:00 PM Pacific Time (on request 9:00 AM to 5:00 PM Mountain Time or 12:00 PM to 8:00 PM Eastern Time), excluding major holidays, to speak directly to a rebate and Choice Engine support agent during business hours. Extended business hours can be set up on demand.
- The toll-free number will include a voicemail line for customers to call and leave a message during non-business hours and major holidays. All voice messages from customers will be returned within 72 hours, excluding major holidays or weekends.
- The Partner will need to notify Enervee of any changes to the phone support set-up, specifically if there is expected to be an increasing volume of phone support minutes, with twenty (20) business days advance notice.



- Enervee will track monthly minutes from all incoming calls to the toll-free number and any outbound phone calls to customers. Enervee agents will use judgement case by case on when it is a better customer experience to call or email.
- Enervee stores MP3 recordings of the last six (6) months of call data.
- Enervee can provide the MP3 call recording(s) upon request by The Partner. If the Partner's request is for a specific call and not for a time frame, it requires a full 10-digit phone number to be supplied to Enervee which Enervee will use to search for a recorded phone call.
- While Enervee can search by the phone number provided by the customer on the claim itself, Enervee cannot guarantee we can find that recording as the customer may have called Enervee from an alternate phone number.

MP3 recordings are delivered to The Partner using Enervee's SFTP server within fourteen (14) days. Enervee will delete the files from our SFTP server thirty (30) days after they have been uploaded. The Partner must request the recording(s) fourteen (14) days in advance.

3.1 EMAIL SUPPORT

Enervee guarantees email support on all business days in the year, excluding the major holidays. Customers can ask questions by using a dedicated support email address. Enervee has a target to respond to all personal communication with platform users within 24 hours but in some cases of high volume it may take up to 72 hours after initial contact.

3.2 MAJOR HOLIDAYS

- | | |
|-------------------------------------|-------------------------------------|
| ○ <i>New Years Day</i> | ○ <i>Labor Day</i> |
| ○ <i>Martin Luther King Jr. Day</i> | ○ <i>Veterans Day</i> |
| ○ <i>Presidents Day</i> | ○ <i>Thanksgiving Day</i> |
| ○ <i>Memorial Day</i> | ○ <i>Day After Thanksgiving Day</i> |
| ○ <i>Independence Day</i> | |
| ○ <i>(Black Friday)</i> | ○ <i>Christmas</i> |

4. REPORTING

4.1 Standard Platform Reporting

Enervee provides Partner with Dashboard. Key metrics are tracked around site traffic and engagement. Additional metrics or views can be added at an additional cost through Professional Services.

Enervee commits to schedule meetings with SVCE:

- Meetings may include the following topics: marketing, customer engagement strategies, development of project scopes and timelines, reviews of reports, application change requests, and program schedules.
- Host quarterly or as mutually agreed meeting to review Enervee roadmap and discuss SVCE-requested Marketplace Platform enhancements.



4.2 Engage Acquisition Reporting

Enervee will provide a self-serve Partner reporting dashboard with these metrics:

- Total Ad Impressions (if applicable)
- Total Sessions
- Total Users
- Total Page Views
- Average Page per Session
- Active Session rate
- Total Active Users
- Active User Rate

4.3 Customer Service Reporting

Email Conversations

Enervee provides The Partner the number of conversation threads, the average thread size, and the approximate number of emails sent per quarter.

Customer Satisfaction/Customer Service Feedback Surveys (CSAT)

Enervee provides the Partner the average satisfaction rating (1-5), number of surveys sent, number of ratings received, and number of comments received of email conversations per quarter.

4.4 Checkout Reporting

TYPE OF REPORT	DESCRIPTION
Total Checkout Visitors	Number of visits that visit the checkout product categories and pages
Total Sold Products	Amount of product sold per category
Returns	Number of products returned per category
Net Revenue Report	The following fields are included: Order Number, Order Date, Order Status, Utility Name, Customer Name, Customer Email, Shipping Address, City, State, Postal Code, Product Category, Product Name, Product SKU, Product Choice Engine Price, Product Quantity, Gross Sales, Promotional Discounts, Total Rebate Amount, Shipping Cost Paid By Customer, Net Sales, Product Cost of Sal, Fulfillment Cost, Net Revenue, Utility Revenue Share
Incentives Claims Report	Enervee will provide Partner with a monthly CSV data feed for settled incentives, which will include the following data fields: email, status, category, claim date, claim id, first name, last name, street number, route, unit, account, city,



state, postal code, payment method, amount, model number, purchase date, price, product id, incentive id, store name, redemption date, payment date, adjustment date, adjustment status, adjustment amount.

- Provide monthly reports by the 15th of each month for activity for the prior month, related to:
- Product purchases summary
- Customer information
- Product information
- Rebates summary
- Customer Satisfaction (CSAT)

Reports will be provided via secure SFTP.

- Provide additional reporting and measurements on KPIs upon request, as mutually agreed upon. Additional fees may incur for special non-standard reports.
- SVCE reserves the right to conduct CSAT studies on the solution, in addition to any reporting Enervee produces.

Performance Metrics

- In the case that CSAT is below a 4 (in a 1 – 5 scale) in a given month, work with SVCE to identify and resolve any issues in the customer experience, technical or otherwise, as soon as possible.
- Work with SVCE to identify other jointly beneficial metrics



EXHIBIT H:
PROFESSIONAL SERVICES

Enervee offers Professional Services for Enervee Choice Engine customization based on Partner's needs. All material requests that are not related to bug fixes on the Enervee product roadmap will be scoped and a proposal detailing hours, timeline and deliverables will be provided to Partner for review and approval.

Enervee releases new software product upgrades and new developments including change requests in six release days per year. Partner and Enervee are planning Professional Services and Change Requests efforts for the upcoming half year in a roadmap development meeting at the beginning of each quarter. This enables Enervee to secure resources and synchronize the new developments with the software releases, Engage Program and/or the Partner marketing activities.

Following list is a non-exhaustive sample of product request examples that would be considered "out of scope", and that would require Professional Services engagements:

- Requests for addition of non-standard products and/or categories
- Requests for integration with dealers/retailers that Enervee does not have already built
- Requests for additional features or functions
- Requests for customized event tracking or analytics



EXHIBIT I:
CHOICE ENGINE SERVICES PACKAGES

DELIVERABLES	DESCRIPTION
Partner Promotions <i>Optional</i>	Product promotion possibilities on Enervee Choice Engine: up of a text and image native ad, separate ad for home page and for each category, tracking of clicks
Contractor Option <i>Included with no revenue share</i>	Includes an integrated Contractor module to connect Partner customers with pre-screened local service professionals. Leveraging HomeAdvisor's proven vetting system and methodologies, customers answer a few simple questions and are contacted immediately with a quote for the services they need. These services include installation of home EV chargers (including Level 2 chargers), HVAC upgrades and other appliance installations.



**EXHIBIT J:
PARTNER PROMOTION RESPONSIBILITIES**

Partner confirms that it will endeavor to meet the requirements specified below for channels as applicable, making all necessary resources available.

CHANNEL	FREQUENCY	REQUIREMENT
Partner Website	Ongoing	Featured on Partner Homepage as menu option. Promotion of Choice Engines and Checkout on Homepage main carousel. Appliances promoted on Partner energy efficiency related pages. All links go directly to the platforms.
Partner Website	Ongoing	Enervee provided remarketing pixel placed
Email	Monthly	Partner Choice Engines only emails sent to all residential customers
Facebook Posts	Weekly	Partner Choice Engines specific posts linking directly to platforms



EXHIBIT K: ENGAGE PROGRAM

1. Enervee Engage Program

Enervee Engage provides a turnkey digital service solution that complements Partner's existing marketing services. Our Engage Program leverages unique capabilities to enhance the effectiveness, efficiency and reach of Partner marketing efforts.

Enervee Engage Program recognizes the distinction between 1., bringing high quality visitors to Enervee Appliances Choice Engine and Checkout (Engage Acquisition) and then 2. engaging Customers with email services that drive continued engagement on Enervee Appliances/Checkout (Engage Activation).

Engage Program Objectives

Engage objectives are linked to the overall Partner strategy i.e. increase market-based savings, selling more products via Checkout. In each instance, Engage builds and constantly optimizes traffic to meet these strategic objectives. Based on Enervee Appliances strategy options, Engage objectives are agreed in the kick-off Engage Strategy Workshop.

1.1 Engage Acquisition Program

Engage Acquisition Program is Enervee's powerful, data-driven marketing service that identifies and segments potential in-market electronic and appliance shoppers, and engages them continuously through a variety of channels, driving high quality traffic to Appliances. Enervee's Data Engine uses efficiency data and product/model information to build out long-tail keywords, create dynamic advertisements, inform budgeting and bids and otherwise drive dynamic, data-driven engagement activities. Enervee has developed specific and unique capabilities to maximize return on investment through each program channel.

1.2 Deliverables Engage Acquisition

- Digital marketing program to capture shoppers in market
- Find Active Shoppers for Appliances in market; delivers visits permonth
- Focus on search engines; optimize on Engage Program objectives
- Project management and quarterly reporting
- Online dashboard reporting

2. Engage Activation Program

Enervee email services provide the most cost-effective channel for large scale traffic and reach of Partner's customers to drive awareness, actions, product sales and engagement to Enervee Choice Engines and Checkout. Engage Activation offers full-service promotional email and data management including email template design and coding, enterprise email list management, audience segmentation, campaign setup and sends, analysis and performance reporting.

2.1 Deliverables Engage Activation

- Email Development incl. creation, text
- Email List mgt, Email campaign set up, tracking and maintenance



- Project management and quarterly reporting
- Online dashboard reporting

<p>Part 1 Email Development <i>optional</i></p>	<ul style="list-style-type: none"> ● Development of all kinds HTML emails (promotional, editorial, reminder, etc.). ● Creation: Design and text ● Production /Coding ● Project Management ● A/B testing of subject line, content and call-to-action buttons if Enervee has access to customer email data base and is sending out emails.
<p>Part 2 Email List Management <i>optional</i></p>	<ul style="list-style-type: none"> ● Import and segmentation of Partner provided customer email list ● Data maintenance of 1M customer email list included in monthly fee; additional subscribers can be implemented on demand ● Black and white listing of email accounts ● A/B testing of subject line, content and call-to-action buttons if Enervee has access to customer email data base and is sending out emails.
<p>Part 3 Email Campaign Setup & Management <i>optional</i></p>	<p>Design and setup of email marketing campaigns. Campaigns are email blasts to a select recipient list segment using structured templates.</p> <ul style="list-style-type: none"> ● Campaign design ● Campaign setup and implementation ● Recipient list segmentation ● Campaigns scheduling & send ● A/B testing of subject line, content and call-to-action buttons if Enervee has access to customer email data base and is sending out emails.

Marketing Services

- Draft, with SVCE staff input and approval, a marketing plan
- The marketing plan may include such details as marketing methods, responsible parties, timing, branding, and other details as needed.
 - SVCE shall review and approve the timing and content of all customer marketing and media buys.
- Uses real-time product data to build out long-tail keywords, create dynamic advertisements, inform budgeting and bids and otherwise drive dynamic, data-driven marketing activities to reach hard-to-reach audiences.
- Utilize channels including, but not limited to, search, Facebook and display ad networks.



- Generate and target specific audiences using first and third-party data, developing lookalike audiences for marketing, and adjusting Choice Engine display elements using the data
- Develop enhanced customer targeting and personalization based on a growing understanding of behavior. Over time, as customers continually engage with the site, use this data, alongside third-party, cookie, and SVCE data sources, to create an ever-more-detailed understanding of the individual shopper, the characteristics of their household, and the programs that may be most applicable to their goals and needs. Use these insights to create precisely targeted marketing and create Audiences, where observed customer behavior allows Enervee to generate a particular set of characteristics that informs more sophisticated marketing approaches, algorithmically overlaying data from multiple sources.
- Ensure the customizable portions of any marketing aligns with SVCE brand and style guidelines.
- All digital advertising and email templates will be approved by SVCE in writing.
- Email and ad buy schedules will adhere to SVCE permissible mailing and display dates and times.
 - Enable email opt-out capabilities for emails sent from SVCE to comply with CAN-SPAM
 - Work with SVCE to identify existing and new customer touch points.
 - Utilize additional marketing methods including, but not limited to, paid advertisements, social media, public relations, and other online and offline marketing channels, if requested by SVCE
- Seek written approval from SVCE regarding the content, placement and schedule of such advertising prior to execution of any additional marketing activities
 - Use SVCE branding for the Marketplace Platform and related marketing materials
- Enable product or service promotions (discounts, sweepstakes, sales, giveaways) as mutually agreed
- Create, on occasion, promotional offers for a quantity, amount, expiration, and specific use restrictions defined by SVCE
- Enable a pop-up banner indicating to the customer the usage of cookies and their terms and conditions.



**EXHIBIT L:
SAAS SUBSCRIPTION ORDER FORM APPLIANCES**

This Order Form provides the type, quantity and payment terms for the use of SaaS Platforms and Services from Enervee.

ORDER FORM I				
Partner: SILICON VALLEY CLEAN ENERGY			MSA #: 009B	
Service Start: <i>Week 9, following contract signing</i>		Service End: 3 years following contract signing		Subscription type: new
PRODUCT	QUANTITY	TYPE	DURATION	PRICE
Appliances Choice Engine	1	Non-Profit	36 months	\$50,000/year \$150,000/3 years
Engage Marketing Program	1	Non-Profit	36 months	\$50,000/year \$150,000/3 years
Checkout - E Commerce	1	Non-Profit	36 months	\$5 per cart*: \$30,000/year minimum \$90,000 min/3 years
Contractor	1	Non-Profit	36 months	<i>Included With no revenue share</i>
PRODUCT SUBTOTAL				\$390,000
Any changes or additions to the agreed scope is defined as Professional Services and will result in additional costs at a rate of \$200 per hour.				
ONE TIME SERVICES		DESCRIPTION	PRICE	
Appliances Implementation		One time setup fee	\$25,000 <i>\$12,500 if signed by 3/16/2020</i>	
Checkout - E Commerce		One time setup fee	\$25,000 <i>\$12,500 if signed by 3/16/2020</i>	
Contractor Implementation Option		One time setup fee	<i>Waived with no revenue share</i>	
Non-standard URL Option		One time setup fee	\$2,500	
ONE TIME SERVICES SUBTOTAL				\$27,500
ORDER FORM TOTAL				\$417,500



Effective Date: April 17, 2020

INVOICING TERMS: ENERVEE WILL INVOICE THE TOTAL OF THE SET UP FEES ON THE EXECUTION OF THE ORDER FORM, AND INVOICE THE LICENSE, ENGAGE AND CHECKOUT FEES ON A YEARLY BASIS.

The signatures below confirm acceptance of this order agreement and the Master Services Agreement, as of the effective date.

PARTNER		ENERVEE CORPORATION	
By:	<i>Girish Balachandran</i> <small>DocuSigned by: 5CA64B9AC4C24C3...</small>	By:	<i>[Signature]</i> <small>DocuSigned by: CB474A9B798A46B...</small>
Name	Girish Balachandran	Name	Luis Castro
Title:	Chief Executive Officer	Title:	Director of Growth
Date:	<u>4/15/2020</u>	Date:	<u>4/15/2020</u>



EXHIBIT M:

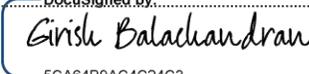
SAAS SUBSCRIPTION ORDER FORM OPTIONAL SERVICES

This Order Form provides the type, quantity and payment terms for the use of SaaS Platforms and Services from Enervee.

ORDER FORM IV				
Partner: Silicon Valley Clean Energy			MSA #: 009B	
Service Start: <i>Week 9, following contract signing</i>		Service End: 3 years following contract signing		Subscription type: new
PRODUCT	QUANTITY	TYPE	DURATION	PRICE
Customer Service: Phone, Voice Mail and Email Support	1	Non-Profit	36 months	\$18,000/year \$54,000/3 years
Engage (Email) Activation Program PART 3 Email Campaign Setup & Management	1	Non-Profit	36 months	\$2,000 per email which are to be deducted from the Engage Marketing Program by request. Not charged separately
PRODUCT SUBTOTAL				\$54,000
Any changes or additions to the agreed scope is defined as Professional Services and will result in additional costs at a rate of \$200 per hour.				
ONE TIME SERVICES		DESCRIPTION	PRICE	
Customer Service		One time setup fee, \$2,500	<i>waived</i>	
ONE TIME SERVICES SUBTOTAL				\$0.00
ORDER FORM TOTAL				\$54,000
Quote Expires:			Effective Date: April 17, 2020	



The signatures below confirm acceptance of this order agreement and the Master Services Agreement, as of the effective date.

SILICON VALLEY CLEAN ENERGY		ENERVEE CORPORATION	
By:		By:	
Name	Girish Balachandran	Name	Luis I Castro
Title:	Chief Executive Officer	Title:	Director of Growth
Date:	4/15/2020	Date:	4/15/2020

Payment Schedule:		
Invoice Date	Products	Amount
Contract signature	One time setup fees	\$27,500
9 weeks following contract signature	All products listed above	\$148,000
One year following contract signature	All products listed above	\$148,000
Two years following contract signature	All products listed above	\$148,000



EXHIBIT N:

CHANGE REQUEST ORDER FORM

Required changes (from Partner) in the scope of a SOW, including any and all modifications, required changes and/or additions to the System, will only be performed when authorized by a Change Form signed by both Parties.

CHANGE REQUEST ORDER FORM				
Partner: SILICON VALLEY CLEAN ENERGY			MSA #:	
Product/Service:	Partner Contact: Andrea		Customer Success Contact:	
Date:		Change Request #: 01		
CHANGE CATEGORY - Mark all that apply				
SCHEDULE	SCOPE	QUALITY	DURATION	OTHER (pls describe)
DESCRIPTION CHANGE REQUEST				
REASONS FOR CHANGE				
			Recurring	Yes No
			Package Price	Yes No
Start Date:		End Date:		
			HOURS	PRICE
			0	\$0.00
Billing Frequency: once		Billing Time:		Billing Currency:
Payment Terms: 30 days		Payment Method:		Contact Enervee Finance:
Quote Expires:		Effective Date:		



The signatures below confirm acceptance of this order agreement and the Master Services Agreement, as of the effective date.

PARTNER		ENERVEE CORPORATION	
By:	_____	By:	_____
Name	Girish Balachandran	Name	_____
Title:	Chief Executive Officer	Title:	_____
Date:	_____	Date:	_____

**EXHIBIT O:****PRODUCT CATEGORIES AVAILABLE AT LAUNCH**

Partner may select any or all of the Product Categories to be accessible to SVCE customers at time of launch or following launch. No additional cost to Partner for inclusion or deletion of any Product Category on this list at any time.

Product Category

Air Conditioner
Air Purifier
Dehumidifier
Dishwasher
Dryer
Electric Water Heater
Freezer
Light Bulb
Monitor
Pool Pump
Projector
Refrigerator
Sound Bar
Tablet
Television
Video Game Console
Washer
Connected Home
Connected Home Application
EV Charger
Evaporative Cooler
Lawn Mower
Pool Heater
Portable Power Station
Power Strip
Thermostat



Staff Report – Item 1f

Item 1f: Adopt Resolution Approving Revised Budget Allocation Adjustment to Continue SVCE’s Innovation Programs for Two Additional Years

From: Girish Balachandran, CEO

Prepared by: Aimee Bailey, Director of Decarbonization and Grid Innovation

Date: 11/13/2020

RECOMMENDATION

Staff recommends the Board approve Resolution No. 2020-32 to adopt the revised budget allocation adjustment to continue Silicon Valley Clean Energy’s (SVCE’s) innovation programs for an additional two years.

EXECUTIVE COMMITTEE RECOMMENDATION

Staff presented an update on SVCE’s innovation programs to the Executive Committee at their October meeting. The Executive Committee unanimously supported the staff proposal to continue the innovation programs at the same annual funding level (\$600k per year) for an additional two years. The Executive Committee acknowledged the historically critical role the public sector has played in driving innovation. They also highlighted the value of leveraging partnerships where feasible, such as with the Bay Area Air Quality Management District, to force-multiply our efforts. Additional information was requested on the status and impact of each pilot, which is provided in Attachment 2. In response to Executive Committee request, staff will be looking into the potential to claim intellectual property and equity benefits through our pilot project investments. Staff will also continue to explore additional ways to measure and effectively communicate the impact of our innovation pilots and broader programs portfolio to relevant stakeholders and the general public.

BACKGROUND

To achieve its mission to reduce dependence on fossil fuels by providing carbon-free, affordable and reliable electricity and innovative programs for the community, Silicon Valley Clean Energy (SVCE) Board of Directors approved the Decarbonization Strategy & Programs Roadmap (abbrev. “Roadmap”) in December 2018. The Roadmap included community-wide greenhouse gas emissions reduction targets through 2030 and a portfolio of programs spanning six program areas¹. One of the programmatic focus areas identified in the Roadmap is Innovation. The goal of SVCE’s innovation programs is to leverage our unique position to engage and support the innovation ecosystem in addressing key market barriers to achieving deep decarbonization in SVCE service territory and beyond. With the adoption of the Roadmap in December 2018, SVCE Board approved \$1,600,000 for FY19-FY20 to implement two innovation programs.

1. **Innovation Partners:** Support the innovation ecosystem by sponsoring and organizing innovation events, such as hackathons.
2. **Innovation Onramp:** Provide grant funding to external partners to support innovative pilot projects. The program design features a periodic application deadline, standardized application process, transparent evaluation criteria, staged funding levels to support scaling from ideas to proofs of concepts to demonstrations, and standardized partnership agreements.

¹ Power supply, built environment, mobility, energy efficiency & grid integration, innovation, and education & outreach

ANALYSIS & DISCUSSION

Innovation Partners – 2019-2020 Activities

Through Innovation Partners, SVCE engaged hundreds of students, innovators, entrepreneurs to focus on identifying solutions to address the climate crisis and improve the health and welfare of our communities.

SVCE sponsored the following three hackathons.

- 2019 Stanford Cleantech Challenge
- 2019 SunCode by Powerhouse
- 2020 Suncode by Powerhouse (cancelled due to COVID; currently repurposing sponsorship funds)

The winning teams of both the 2019 Stanford Cleantech Challenge and the 2019 SunCode hackathon focused on SVCE's challenge to propose effective solutions to accelerate electrifying existing single-family homes.

SVCE partnered with Powerhouse to organize the GridShift Hackathon, which took place January 31 through February 1, 2020, at Google Launchpad space in San Francisco. The event was co-sponsored by four other community power agencies. Over a hundred hackers competed for 24 hours for \$16k in prizes. The winners built apps to smart schedule a customer's flexible electrical loads; help EV drivers find charging stations to optimize for cost, carbon and convenience; and control a passive light in the home to alert residents of planned power shut-offs and high electricity prices.

Innovation Onramp – 2019-2020 Activities

With program administration support from Center for Sustainable Energy (CSE), SVCE designed and developed the infrastructure of the Innovation Onramp program (application, evaluation process, and standardized partnership agreements), and carried out three application cycles to date, in Spring 2019, Fall 2019 and Spring 2020. The number of proposals received per application cycle tripled over the three application cycles. The primary evaluation criteria for proposals are the five prioritization criteria identified in the Roadmap². Secondary evaluation criteria include staff resource impact, acceptance of the terms and conditions in the standardized partnership agreements, co-funding for project, and alignment with other program activities. The evaluation process includes representatives from peer agencies, regional agencies, and the venture capital community. External evaluation panel participants from the completed three application rounds include representatives from City of Palo Alto Utilities, Bay Area Air Quality Management District, Elemental Excelerator, Breakthrough Energy Ventures and New Energy Nexus.

Six pilots were launched through the first two application cycles, and five more are currently under negotiation from the third application cycle. Additional details of the current pilots are included in Attachment 2. Each pilot has a dedicated evaluation plan carried out by ADM, SVCE's evaluation, measurement and verification (EM&V) firm, that describes how success will be defined and measured for the pilot. Given the lead time for developing, launching and running the pilots, the first evaluation plan will be tentatively completed in the coming six months. Nevertheless, Attachment 2 includes initial results.

Budget Status & Staff Proposal

The current budget allocation for FY19-FY20 is set to be depleted on schedule. A summary of spending to date is included in the table below, including co-funding from external partners in the right-hand most column. Additional budget allocation is required to continue the innovation programs. Staff proposes extending SVCE's two innovation programs for an additional two years at the same funding level of \$600k per year.

	<i>Program budget</i>	<i>Co-funding</i>
Innovation Partners (spent)	\$97,500	\$17,500
Innovation Onramp* (spent or under contract)	\$731,280	\$255,000
Innovation Onramp (under negotiation)	Approx. \$350,000	TBD
Total:	\$1,178,780	TBD
<i>Current BOD Authority (FY19-FY20)</i>	\$1,200,000	

² Customer & Community Value; Emissions Impact; Scalable & Transferable; Equity in Service; Core Role for SVCE

Agenda Item: 1f**Agenda Date: 11/13/2020**

**Includes program admin support from CSE, EM&V support from ADM, as well as direct pilot funding*

For Innovation Partners, the budget allocation will enable continued sponsorship of virtual hackathon events (events TBD), as well as a second potential SVCE-organized hackathon for 2022. For Innovation Onramp, Staff will continue to hold regular application cycles to launch promising pilot projects with third parties. Staff will solicit feedback from prior applicants, current participants and other stakeholders to inform improvements to the program. Based on feedback already received to date, Staff will also modify the program to add an additional, smaller funding stage (a "seed" round for \$5k-20k) to support early stage concepts.

STRATEGIC PLAN

The proposal supports SVCE's updated 2020-2021 Strategic Plan Goal 9, which is to "coordinate development of decarbonization strategy, lead design of local policy and programs, and support program deployment", to support the achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030.

FISCAL IMPACT

Through the annual budget process, the Board approved 2% of annual operating revenues for programs. The proposed funding allocation adjustment of \$600k per fiscal year for FY21 and FY22 to continue the innovation programs remains within the approved programs budget. Therefore, the staff proposal has no incremental fiscal impact.

ATTACHMENTS

1. Resolution No. 2020-32 to revise the budget allocation adjustment for the innovation programs
2. Innovation Onramp – Overview of Status of Current Pilots

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2020-32

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY TO APPROVE A BUDGET ALLOCATION ADJUSTMENT FOR THE IMPLEMENTATION OF THE INNOVATION PROGRAMS

WHEREAS, the Silicon Valley Clean Energy Authority (“Authority”) was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, the Board adopted 2021, 2025 and 2030 greenhouse gas emissions reduction targets; and

WHEREAS, the Board approved Operating Budgets for Fiscal Year (FY) 2018-2019 and FY 2019-2020 that provide for funding from 2% of energy sales to support decarbonization and grid programs; and

WHEREAS, the Board adopted the Decarbonization Strategy and Programs Roadmap (“Roadmap”) and an initial budget allocation for the implementation of decarbonization programs pursuant to the Roadmap on December 12, 2018 by Resolution No. 2018-20; and

WHEREAS, Resolution 2018-20 included an initial budget of \$1,200,000 for Fiscal Year 2019 and Fiscal Year 2020 for the Innovation Programs; and

WHEREAS, SVCE staff has returned to the Board with requests for revisions to the budget allocation as decarbonization programs are developed that are consistent with the Roadmap; and

WHEREAS, the Board adopted Resolution Nos. 2019-02, 2019-07, 2020-01, 2020-06, and 2020-08 to amend the initial budget for decarbonization programs by approving allocations for the electric vehicle service equipment (EVSE) incentive program, workforce development and training activities, the heat pump water heater program, building decarbonization joint action plan, resilience at community facilities, streamlining community-wide electrification, and the reach code initiative; and

WHEREAS, the Board desires to allocate an additional \$1,200,000 for the extension of the Innovation Programs in Fiscal Year 2021 and Fiscal Year 2022.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby amend the budget for decarbonization programs adopted by

Resolution No. 2018-20 and amended by Resolution Nos. 2019-02, No. 2019-07, No. 2020-01, No. 2020-06, and No. 2020-8 by approving the allocation of an additional \$1,200,000 to the Innovation Programs in Fiscal Year 2021 and Fiscal Year 2022.

PASSED AND ADOPTED this 13th day of November, 2020, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

Chair

ATTEST:

Andrea Pizano, Board Secretary

Innovation Onramp – Summary of Current Pilots

Pilot Summary	Status
<p>Partner: UtilityAPI</p> <p>Title: Empowering GHG Reduction, Choice, Competition and Local Investment through Data Access</p> <p>Vision: The goal of this flagship pilot is to demonstrate the impact of free, authorized access to standardized and automated energy usage data in accelerating the deployment of clean energy projects while empowering consumer choice and supporting local businesses. Through this pilot, UtilityAPI will bring their industry-leading Data Exchange Platform to SVCE customers and third-party service providers. The platform allows third party companies in the solar, storage, energy efficiency and EV charging sectors to easily request authorization from SVCE customers to access their utility bill and usage data. Streamlined access to customer utility data enables these companies to provide solutions that are more tailored to customers' needs, while also leveling the playing field for businesses of all sizes.</p> <p>Budget:</p> <ul style="list-style-type: none"> • Pilot agreement: \$279,000 • EM&V: \$20,130 	<p>Status: In progress</p> <p>Notes:</p> <ul style="list-style-type: none"> • Pilot launched in Spring 2020 under the name "SVCE Data Hive" (http://data.svcleanenergy.org/). • Currently has over 90 third-party registrations, making it the second most popular "green button connect" platform in the world by registrations. Third parties include Sunrun, Cinnamon Energy Systems, Enel X, and a variety of other small and large clean energy solution providers. • Pilot term extended to June 2021 due to slower speed of uptake in usage, likely due to COVID impacts on small businesses and local project development, as well as the lead time required for small businesses to integrate a new tool/process. User outreach, promotion, training is ongoing. • EM&V is tentatively scheduled to commence in early 2021. • Publicity to date: <ul style="list-style-type: none"> ○ Silicon Valley Clean Energy and UtilityAPI Want to Free Your Meter Data (Greentech Media) ○ 'Data Hive' Opens for Solar, Battery Vendors in Silicon Valley (Greentech Media) ○ Sharing Load Profile Data: Best Practices and Examples (Northeast Energy Efficiency Partnership (NEEP)) ○ Accelerating Decarbonization and Local Investment Through Better Data Access (CalCCA Community Energy Innovation webinar) ○ The Zeal of the Convert: Fast, Free, Easy to Access Data from SVCE's Data Hive Wins Over a Holdout (UtilityAPI blog)

Pilot Summary	Status
<p><u>Partner:</u> Greenbank Associates</p> <p><u>Title:</u> Zero-Carbon Schools: Supporting K-12 School and Community College Districts to Achieve Zero Operating Carbon Emissions</p> <p><u>Vision:</u> This project will build upon recent research and best practices to develop a programmatic solution to provide school districts with a guide to modernizing existing school and college buildings towards zero carbon operating emissions. This 2019-20 Innovation Onramp grant project seeks to engage the K-14 facilities/leadership community to assess their needs in moving school buildings to zero net energy (ZNE) and beyond, to 100% clean energy use district-wide. Taking actions now to plan for future building electrification, and deep energy retrofits of existing buildings to zero carbon, combined with solar and battery storage, can reduce utility expenses and increase general funds; increase student health and attendance, broaden environmental education opportunities; reduce greenhouse gas emissions; leverage bond funding; and help provide resilience to districts and their communities.</p> <p><u>Budget:</u></p> <ul style="list-style-type: none"> Pilot agreement: \$75,000 	<p><u>Status:</u> Closed</p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> This pilot was closed as of Fall 2020 due to inability of project partner to get sufficient engagement from school districts during this time, given COVID and shelter-in-place. Prior to closing the pilot, a literature review was produced of recent research and best practices of programmatic solutions for school districts modernizing existing school and college buildings towards zero carbon operating emissions.

Pilot Summary	Status
<p><u>Partner:</u> Stanford University</p> <p><u>Title:</u> Understanding the Role of Land Use and Urban Form in the Energy Efficiency and Decarbonization of Silicon Valley’s Urban Energy Systems</p> <p><u>Vision:</u> In order to achieve California’s aggressive 2050 GHG goals, there is a need for an additional 61-74% reduction in GHG emissions below forecasted 2030 levels. Buildings in California are responsible for a quarter of total emissions, making urban energy efficiency and decarbonization of the built environment a critical lever to achieve the state’s GHG goals. This project will address gaps in understanding of the interplay of distributed energy resources, electric mobility, and land use patterns through the development of a novel efficiency framework and benchmarking protocol for urban energy efficiency, offering ways to compare the performance of SVCE’s thirteen communities in the clean energy transition. In addition, understanding the relationship between land use change and energy efficiency can allow SVCE to partner with its communities to offer pathways to decarbonization through land use and zoning regulations</p> <p><u>Budget:</u></p> <ul style="list-style-type: none"> N/A (academic partnership) 	<p><u>Status:</u> In progress</p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> Research team developing underlying research methodology, including prototype of modeling framework. Currently working to define and share an anonymized data set containing information on buildings, mobility and energy use across one or more SVCE communities.

Pilot Summary	Status
<p><u>Partner:</u> ev.energy</p> <p><u>Title:</u> Zero-Carbon Electric Vehicle Charging</p> <p><u>Vision:</u> The goal of this project is to minimize the carbon intensity of the energy that goes into powering electric vehicles (EVs), while making EVs more affordable by reducing the cost to charge at home. The pilot will be delivered in partnership with ev.energy, whose software optimizes EV charging schedules around a number of dynamic variables, including renewable energy generation, energy costs, grid constraints and customer preference. Up to 200 SVCE customers will be enrolled into the pilot, which is expected to fully launch by autumn 2020.</p> <p><u>Budget:</u></p> <ul style="list-style-type: none"> • Pilot agreement: \$99,000 • Co-funding: \$100,000 • EM&V: \$17,000 	<p><u>Status:</u> In progress</p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> • Pilot launched in Fall 2020 under the name “SVCE GridShift: EV Charging” (https://www.svcleanenergy.org/gridshift-ev/). • Eligibility requirements include customers who have VW and Tesla vehicles, are on time-of-use rates, and not participating in any other third-party demand response program. • Currently the program has achieved approximately half of the targeted enrollment of 200 participants. Enrollment scheduled to be complete by Nov 2020. • EM&V is tentatively scheduled to commence in Q2 2021 after six months of data collection.

Pilot Summary	Status
<p><u>Partner:</u> EVmatch</p> <p><u>Title:</u> Unlocking Access to Electric Vehicle Charging in Multi-unit Dwellings through a Reservation-Based Software Platform for Shared Charging</p> <p><u>Vision:</u> Currently, many multi-unit dwelling (MUD) property managers struggle to offer cost-effective Level 2 electric vehicle (EV) charging to their residents with accurate pricing, equitable access, and an efficient sharing system. Additionally, if a building manager has few or no tenants with EVs, they have minimal incentive to install charging infrastructure, which establishes a classic split incentive barrier for EV charging adoption in multifamily housing. This EVmatch project aims to provide an affordable charging solution that leverages WiFi-enabled Level 2 charging hardware and a reservation-based EV charging software application to support building owners in managing their chargers among both residents and the public at large.</p> <p><u>Budget:</u></p> <ul style="list-style-type: none"> • Pilot agreement: \$74,000 • Co-funding: \$50,000 • EM&V included in EVI portfolio evaluation plan 	<p><u>Status:</u> In progress</p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> • Pilot launched in Summer 2020. • After robust outreach efforts, four suitable multi-unit dwelling (MUD) sites were identified. Chargers are currently being installed and commissioned. • The pilot test period will run through the first half of 2021, and EM&V is tentatively scheduled to commence in Summer 2021.

Pilot Summary	Status
<p><u>Partner:</u> Ecology Action</p> <p><u>Title:</u> Accelerating Electric Vehicle Adoption in Low and Moderate Income Multifamily Properties through Low Power Charging</p> <p><u>Vision:</u> Multiple studies have shown that without access to reliable, affordable charging at home, multifamily residents are very unlikely to drive electric. Ecology Action’s project design hypothesis is that for any charging solution to be scalable in the multi-family market, it must be both hassle-free and delivered at virtually no cost to the multifamily property owner. The project will thus prototype four critical innovative elements: (1) very low-cost equipment configuration, (2) an end-to-end installation service package, (3) permanent alignment of agency incentives, and (4) tight coordination with low- and moderate-income EV ownership incentive programs. The ultimate goal is to create a rapidly scalable, low-cost, low-power multifamily charging solution in the market.</p> <p><u>Budget:</u></p> <ul style="list-style-type: none"> • Pilot agreement: \$99,880 • Co-funding: \$105,140 • EM&V included in EVI portfolio evaluation plan 	<p><u>Status:</u> In progress</p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> • Pilot launched in Summer 2020. • Despite a robust outreach effort to scores of affordable housing representatives, no affordable housing entities have agreed to participate, citing economic uncertainty from COVID as the main reason. Outreach efforts ongoing. Several moderate- and mixed- (low and moderate) income sites have been identified. • Contingent upon securing site agreements with the selected properties, aiming to have early installation complete by end of year. • The pilot test period is scheduled to run through the first half of 2021, and EM&V is tentatively scheduled to commence in Summer 2021.



Staff Report – Item 1g

Item 1g: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Howard Miller, Chair of the Board

Date: 11/13/2020

At the October 23, 2020 Executive Committee meeting, the committee received updates on Innovation Programs, the formation of a Super Joint Powers Authority, and SVCE position requests.

The committee supported staff's efforts on innovation programs, and supported the budget allocation proposal being brought to the Board meeting on November 13th to continue innovation programs. Committee members suggested including additional detail about the progress of the pilots which SVCE has sponsored.

The committee discussed some of the questions raised at the Board of Directors meeting regarding the super joint powers authority in more detail, and suggested staff bring this topic to other SVCE committees.

Staff presented on upcoming position requests, which have previously been discussed at the board level. The committee was supportive in the development of a Senior Government Affairs Manager position, which is up for approval at the November 13th board meeting.

Materials from this October meeting can be found here: [SVCE Executive Committee Meeting Materials, 10/23/20](#)

The next meeting of the Executive Committee will be Monday, November 23rd, 11:00 am ; meeting information will be listed on the agenda which will be posted 72 hours in advance of the meeting.



Staff Report – Item 1h

Item 1h: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors
From: Rob Rennie, Chair of the Finance and Administration Committee
Date: 11/13/2020

No report as the Finance and Administration Committee has not met since September 15, 2020.

The next meeting of the committee is tentatively scheduled for Monday, November 30th, 2:00 p.m. Materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 1i

Item 1i: **Audit Committee Report**

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/13/2020

No report as the Audit Committee has not met since September 2, 2020; the next meeting of the committee is to be decided and will be announced at a later date.



Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 11/13/2020

REPORT

SVCE Staff Update

Amrit Singh joined SVCE November 9, 2020 as the new Chief Financial Officer/Director of Finance and Administration. Amrit has two decades of experience in the energy business and more specifically in managing the risks of a complex energy procurement portfolio at a large utility.

Most of his utility experiences are from working in leadership positions for Pacific Gas and Electric Company (PG&E). His roles at PG&E included Senior Director, Market and Credit Risk Management and Senior Director, Revenue Requirements and Rates. Amrit has also worked at startup companies in the energy field. Most recently he provided strategic consulting in areas of risk management and utility operations and his clients have included energy companies, IOUs and CCAs. He also worked on an initiative to digitally transform utility operations by creating a risk-optimized decision-making platform that combines smart technologies, advanced analytics, and risk-based decision-making framework. Amrit has an MBA from the University of California, Berkeley, a BS in Managerial Economics from the University of California, Davis, and a certificate in Data Science from UC Berkeley.

CEO Agreements Executed

The following agreements have been executed by the CEO, consistent with the authority delegated by the Board:

- 1) Ascend Analytics, Task Order: Power Markets Training Workshop, not to exceed \$20,000
- 2) Ascend Analytics, Task Order: Portfolio Management, CAISO Market Reports & Analytic Platform, not to exceed \$210,000
- 3) Singer Associates: Strategic Communication Services, not to exceed \$29,000
- 4) Ascend Analytics, Task Order: Customer Y and Large Customer Analyses, not to exceed \$50,000
- 5) MRW, Amendment: 2020 IRP Development Services, time extension to 9/30/2021
- 6) Marsh & McLennan Agency, LLC (MMA): Health Benefits Consulting Services, not to exceed \$30,000
- 7) Joint Venture Silicon Valley: Convening support for Silicon Valley Transportation Electrification Clearinghouse and Regional Electric Vehicle Leadership Recognition Programs Services, not to exceed \$48,000

CEO Power Supply Agreements Executed

Counterparty Name	Execution Date	Transaction Type	Product	Start Date	End Date	Notional Value
Elk Hills Power, LLC	10/8/2020	Purchase	Resource Adequacy	12/1/2021	12/31/2021	\$140,250
Calpine	8/6/2020	Purchase	Resource Adequacy	1/1/2021	12/31/2021	\$1,872,000
Calpine	8/6/2020	Purchase	Resource Adequacy	1/1/2021	12/31/2021	\$5,760,000
Calpine	8/6/2020	Sale	Resource Adequacy	1/1/2021	12/31/2021	\$4,992,000
Calpine	8/6/2020	Purchase	Resource Adequacy	1/1/2021	12/31/2021	\$2,088,000
LEAP Frog Energy	10/13/2020	Purchase	Resource Adequacy	4/1/2021	12/31/2022	\$225,330

Agenda Item: 2**Agenda Date: 11/13/2020**

San Jose Clean Energy	10/9/2020	Purchase	Import Allocation Rights	8/1/2021	9/30/2021	\$0
San Jose Clean Energy	10/9/2020	Sale	Import Allocation Rights	4/1/2021	10/31/2021	\$0
Morgan Stanley Capital Group	10/19/2020	Purchase	Resource Adequacy	6/1/2021	9/30/2021	\$940,000
MCE	10/16/2020	Sale	Resource Adequacy	10/1/2022	10/31/2022	\$71,500
MCE	10/16/2020	Purchase	Resource Adequacy	10/1/2022	10/31/2022	\$97,500
MCE	10/16/2020	Purchase	Resource Adequacy	2/1/2022	10/31/2022	\$203,500
PG&E	10/20/2020	Purchase	Resource Adequacy	1/1/2022	12/31/2022	\$2,238,924.90
Powerex	10/22/2020	Purchase	Import Allocation Rights	5/1/2021	10/31/2021	\$0
Powerex	10/22/2020	Purchase	Resource Adequacy	5/1/2021	10/31/2021	\$4,018,500
Powerex	10/22/2020	Purchase	Resource Adequacy	6/1/2021	9/30/2021	\$94,500
SDG&E	10/16/2020	Purchase	Resource Adequacy	6/1/2021	8/31/2021	\$1,841,161.90
SJCE	10/23/2020	Purchase	Resource Adequacy	1/1/2021	6/30/2021	\$559,810
SJCE	10/23/2020	Sale	Resource Adequacy	1/1/2021	6/30/2021	\$684,810
PCE	10/26/2020	Purchase	Resource Adequacy	3/1/2022	11/30/2022	\$626,222.50
PCE	10/23/2020	Purchase	Resource Adequacy	2/1/2021	11/30/2021	\$486,000
PCE	10/23/2020	Sale	Resource Adequacy	2/1/2021	11/30/2021	\$624,000
EBCE	10/26/2020	Purchase	Resource Adequacy	2/1/2021	11/30/2021	\$219,500
EBCE	10/26/2020	Sale	Resource Adequacy	2/1/2021	11/30/2021	\$303,500
Central Coast Community Energy	10/16/2020	Purchase	Resource Adequacy	8/1/2021	10/31/2021	\$446,500
Central Coast Community Energy	10/16/2020	Sale	Resource Adequacy	8/1/2021	10/31/2021	\$446,500
BPA	10/28/2020	Purchase	Resource Adequacy	6/1/2021	9/30/2021	\$739,600
Southern California Edison	10/28/2020	Purchase	Resource Adequacy	3/1/2022	3/31/2022	\$55,003.20
Southern California Edison	10/28/2020	Purchase	Resource Adequacy	1/1/2022	12/31/2022	\$377,032.40
Calpine	10/30/2020	Purchase	Resource Adequacy	1/1/2022	12/31/2022	\$5,742,000
Ohm Connect	10/28/2020	Purchase	Resource Adequacy	1/1/2022	12/31/2022	\$648,220
Powerex	10/22/2020	Purchase	Non-Renewable Carbon Free	5/1/2021	10/31/2021	\$159,810
Powerex	10/22/2020	Purchase	Non-Renewable Carbon Free	6/1/2021	9/30/2021	\$60,984
Morgan Stanley Capital Group	10/19/2020	Purchase	Non-Renewable Carbon Free	6/1/2021	9/30/2021	\$30,606.40
BPA	10/28/2020	Purchase	Non-Renewable Carbon Free	6/1/2021	9/30/2021	\$101,376
Calpine	10/30/2020	Purchase	Hedge & Renewable Energy PCC-1	1/1/2022	12/31/2022	\$30,538,411.20

These agreements are included in the Board packet as Appendix A.

Presentations & Relevant Meetings Attended by CEO

- Participated in CalCCA Monthly board, executive, and legislative meetings;

Agenda Item: 2

Agenda Date: 11/13/2020

- Long-Duration Storage Super-JPA and RFO: Updates to various CCAs, CPUC, CAISO and legislative staff

ATTACHMENTS

1. Decarb & Grid Innovation Programs Update, November 2020
2. Account Services & Community Relations Update, November 2020
3. Regulatory and Legislative Update, November 2020
4. Agenda Planning Document, November 2020- February 2021
5. SVCE Director Requests Update



Decarb & Grid Innovation Programs Update

November 2020

1. Customer Relief & Community Resilience (1 of 4)

Staff has begun work on three new programs approved by the SVCE Board in May 2020:

	Program	Est \$	\$ spent by
Customer Relief	1a) \$100 bill credit to all residential CARE/FERA customers	\$2.5M	September 2020
	1b) \$250 bill credit to qualifying/responding small business customers	\$1.0M	September 2020
Workforce Relief	2a) Workforce Electrification Training with \$500 Stipend	\$1.0M	August 2020
	2b) Workforce Home Electrification Installation	\$0.5M	March 2021
Community Resiliency	3a) Resiliency Infrastructure Planning Support	\$1.0M	December 2021
	3b) Resiliency Infrastructure Capital Project Support	<u>\$4.0M</u>	December 2022

~\$10M



1. Customer Relief & Community Resilience (2 of 4)

Customer Relief

Residential

- 26,853 Residential CARE/FERA customers received credits as of 9/30
 - \$2.82M of \$2.5M budget. **Phase 1 and Phase 2 complete**

Small Commercial

- 3,139 local small businesses awarded \$250 bill credits as of 10/07
 - \$785k of \$1.0M budget. **Commercial credits complete**

\$3.6M of \$3.5M budget combined

1. Customer Relief & Community Resilience (3 of 4)

Workforce Relief

Future Fundamentals – Contractor Training

- Primary content recorded, currently being edited
- Supplemental content under development
- Partnered with Redwood Energy and Workforce Institute
- Initial online asynchronous curriculum going live in Q1 '21

1. Customer Relief & Community Resilience (4 of 4)

Community Resiliency

- Kicked-off planning, analysis, and support efforts
- Worked with member agencies one-on-one to address questions related to capex and planning grants

2. Reach Code Initiative (1 of 2)

- **Buildings**

- **Eleven cities have adopted Reach Codes** – Morgan Hill, Mountain View, Milpitas, Saratoga, Monte Sereno, Los Gatos, Cupertino, Campbell, Los Altos Hills, Sunnyvale, and Los Altos.
- Technical support platform available for electrification at www.AllElectricDesign.org
- Morgan Hill council briefed on amending existing code with additional battery storage considerations

- **EVs**

- **Nine member agencies adopted EV reach codes**
- Morgan Hill council briefed on adding EV codes



2. Reach Code Initiative (2 of 2)

Member Agency	Status	Next Meeting	Date of Next Meeting	Code Language	Building Reach			EV Reach
					Encourage Electric (1 + 2 + 2A)	Mostly Electric (1 + 2A)	All Electric (1 only)	Higher than CalGREEN
Mountain View		Approved		Begins on pg. 23			X	X
Morgan Hill		Approved		Begins on pg. 45			X	
Milpitas		Approved		Begins on pg. 1132	X			X
Monte Sereno		Approved		Begins on pg. 3	X ¹			X
Saratoga		Approved		Begins on pg. 33		X		X
Los Gatos		Approved		Begins on pg. 93			X	X
Cupertino		Approved		Ordinance			X	X
Los Altos Hills		Approved		Ordinance		X		X
Campbell		Approved		Begins on pg. 41		X		
Los Altos		Approved		Ordinance		X		
Sunnyvale		Approved		Ordinance			X	
Santa Clara County		Staff Proposal			X			
Gilroy	-	Declined						

Key

Status

- Approved
- 2nd Reading
- 1st Reading
- Staff Proposal
- Council Briefing

Building Reach

- 1 - All-electric buildings
- 2 - Mixed fuel has higher requirements
- 2A - Mostly electric/electric heating only



3. FutureFit Home Program

Phase 1 & 2 focus on Heat Pump Water Heaters

Phase 1 - Co-funded by Air District grant is closed

- **97 Completed.** Processing remaining reservations
- Entering EM&V phase to learn program impacts

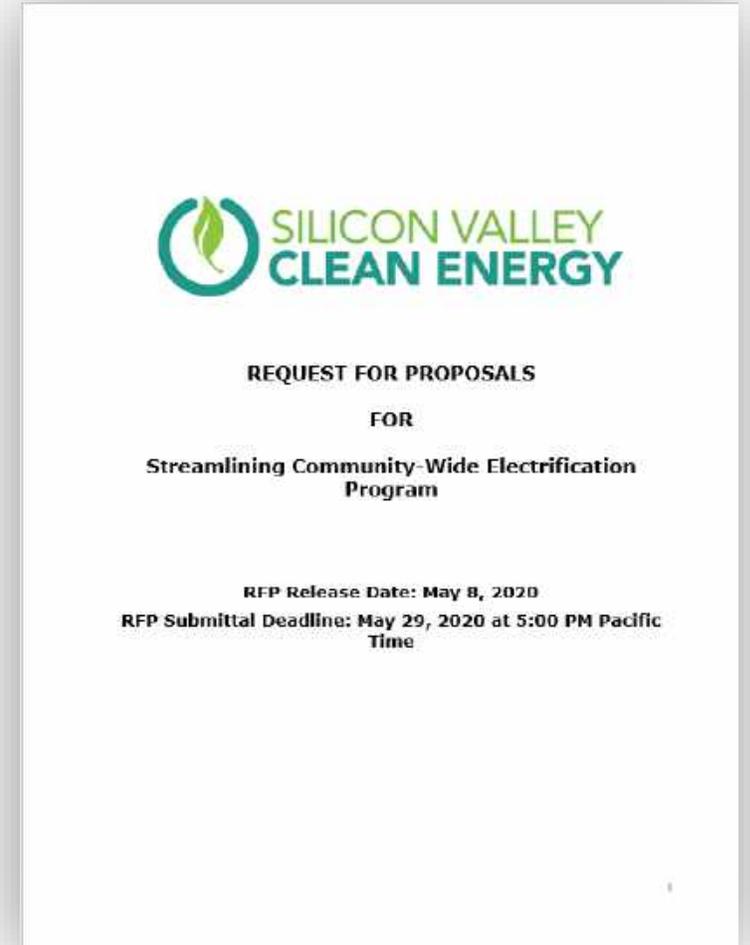
Phase 2 - launched August 24, 2020

- **120 Applications. 19 Completed installations, 1 CARE**
- More HPWH units are eligible
- Continues incentive for service panel upgrade



4. Streamlining Community-Wide Electrification

- Purpose: Review member agency's permitting and inspection processes and identify barriers and key opportunities related to electrification.
- Two Deliverables:
 - Baseline Assessment and Best Practices Guide
- Data collection began in August
 - Currently finalizing interviews with building department staff, contractors, and industry stakeholders
 - Consultants to present draft of Baseline Assessment in mid-November



4. Streamlining Community-Wide Electrification

- 12 out of 13-member agency’s building departments have completed the interview
- Will continue outreach to the member agencies who have yet to participate

Completed	Not Completed
Campbell	Monte Sereno
County of Santa Clara	
Cupertino	
Gilroy	
Los Altos	
Los Altos Hills	
Los Gatos	
Milpitas	
Morgan Hill	
Mountain View	
Saratoga	
Sunnyvale	

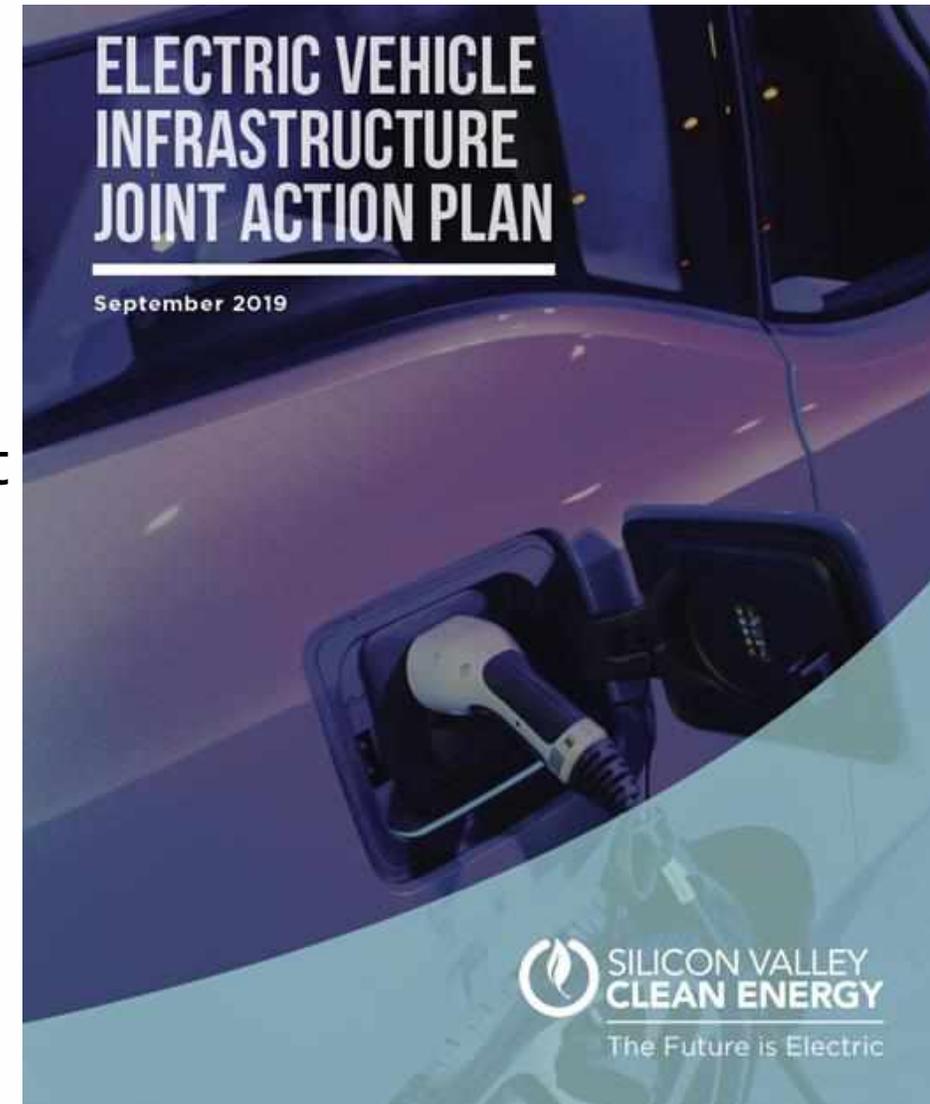
Thank you to all the Building Officials who participated in the study during these busy times!

5. Building Decarb Plan

- BOD approved building decarb joint action plan as program priority in Feb 2020
- Purpose: *articulate a shared vision for how SVCE and member agencies can continue to work to decarbonize the built environment & establish prioritized actions*
- Schedule:
 - Mar – work commenced
 - May – mini-workshops with stakeholders
 - Jul – draft plan distributed for stakeholder input
 - Aug – synthesizing stakeholder feedback and revising draft
 - Sep – Exec Comm review
- **Please see regular agenda for proposed Plan**

6. EV Programs (1 of 2)

- **CALeVIP** webpage is now open (calevip.org/incentive-project/peninsula-silicon-valley) - accepting applications on 12/16/20
- Staff reviewing **Priority Zone DC Fast Charging** applications for SVCE incentives that stack on top of CALeVIP
- **Silicon Valley Transportation Electrification Clearinghouse** resources online at svcleanenergy.org/svtec/. Working group actively engaged on streamlining interconnection process.
- Selected and notified **Regional Recognition** awardees.



Digital version available at:

<https://www.svcleanenergy.org/programs/>

6. EV Programs (2 of 2)

FutureFit Assist: EV Charging - Now Live!

- Participation summary:
 - 504 sites/owners have received information
 - 128 direct conversations
 - 5 active participants, including three member agencies—Sunnyvale, Saratoga and Gilroy
- Concierge support to multifamily and small/medium business to install EV charging – education through installs
- SVCE will continue to adapt this offering based on lessons learned
- Apply at: <https://svcleanenergy.org/ev-charging-assist/>



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7. Lights On Silicon Valley

- Partnership with Sunrun that will lead to resilience for thousands of SVCE customers (at single- and multi-family homes) by installing solar+storage systems
- Batteries form "virtual power plant" (VPP) to provide energy to the grid when not in use for back-up power
- Customers receive \$1,250 up-front rebate for enrolling in the VPP program
- Ads and outreach by Sunrun commencing soon – finalizing language and requirements
- Interested customers can sign up online at: svcleanenergy.org/lights-on-sv/

8. Customer Resource Center - *eHub*



- eHub formally launched to customers in September via press release, newsletter, and digital toolkits to member agencies and community organizations
- Introductory email sent to 160,000+ residential customers in mid-October
 - Follow up campaigns planned to drive interest and awareness of EVs and solar+battery storage tools
- Planning holiday promotions via Appliances Assistant to drive traffic to website
 - Targeting discounts on portable induction cooktops, LED lightbulbs, and smart power strips

9. “The Switch is On” Electrification Awareness Campaign

- Consumer building electrification awareness campaign, coordinated by the Building Decarbonization Coalition (BDC) to drive traffic to switchison.org and the SVCE website
- SVCE funding local ad deployment
 - Campaign live November – January
 - Includes digital ads, co-branded social media ads, and a TV commercial
- Campaign has 11 funding partners, including CCAs, IOUs, municipal utilities, and regional agencies
- First phase of a multi-year campaign, BDC recently secured additional state funds to further expand the campaign statewide

9. "The Switch is On" Electrification Awareness Campaign

Take climate action without leaving your house.

The modern electric home. Cleaner. Safer. Better.



THE SWITCH IS ON
SwitchisOn.org

It's still a shower. Just without the fracking.

New electric water heaters. Cleaner. and 75% less energy.



THE SWITCH IS ON

LEARN MORE ►



Instagram

SwitchisOn

Super efficient heaters that can also cool? Teach an old home a new trick.



23 likes

SwitchisOn Find out why your next air conditioner should be an air conditioner. #TheSwitchisOn

Find out why your next furnace shouldn't be a furnace.

Electric heat pumps heat and cool, using a fraction of the energy.

FIND A REBATE ►



THE SWITCH IS ON

Working from home just got more comfortable.

New electric heat pumps. Heat, cool and save.



THE SWITCH IS ON

When your water heater decides to go to a better place.

New heaters. 75% less energy. 100% less pollution.

FIND A REBATE ►



THE SWITCH IS ON

What's better than a carbon monoxide alarm? Not needing a carbon monoxide alarm.

New electric cooktops, for a healthier kitchen.

EXPLORE COOKTOPS ►



THE SWITCH IS ON

10. Innovation Programs

- Staff in **final stages of negotiating pilot agreements** with 5 proposing teams from spring application round focused on *resilience*
- Currently **enrolling participants for smart charging pilot** with ev.energy
- EVmatch is **installing charging equipment at multiple MUD sites** to demonstrate their reservation-based software platform for shared charging
- **Please see item on consent calendar for more information**

11. Other Updates

- Co-presented with Ascend Analytics at the **Distributed Energy Conference** on Oct 20 on our “virtual power plant” valuation analysis
- Panel presenter at EPRI’s national **Electrification Virtual Summit** on Oct 23 on enabling connected, electrified communities at scale



1. Outreach Events & Sponsorships

SVCE is supporting and engaging in virtual events, meetings and conferences allowing us to continue sharing information and resources with the community.

Past and upcoming events:

Date	Time	Description	Location
Oct. 14	6 – 7:15 PM	Los Gatos Library BayREN Home+ Workshop – <i>presentation</i>	Virtual
Oct. 15	6:30 – 7:45 PM	Mountain View BayREN Home+ Workshop– <i>presentation</i>	Virtual
Oct. 21	3 - 4 PM	Bay Area Multifamily Building Enhancements Workshop– <i>presentation</i>	Virtual
Nov. 19	7 - 8:15 PM	Milpitas BayREN Home+ Workshop - <i>presentation</i>	Virtual

2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.25%	96.26%
Commercial	96.32%	



3. Member Agency Working Group Update

The recent MAWG meeting was held virtually on October 22, 2020 and was attended by ten different agencies and organizations with a total of 19 participants.

The following agenda items were presented and discussed:

- Community Energy Resilience Program
- Lights On Silicon Valley
- Streamlining Community-Wide Electrification
- HPWH 2.0 and Reach Code



4. Latest SVCE News

- [Bay Area, Central Coast CCAs Launch \\$65m in EV-Charging Infrastructure Deployment Programs to Support California's Transportation Shift, Press Release, 10-26-20](#)
- [California Community Choice Aggregators Issue Request for Long-Duration Storage, Press Release, 10-16-20](#)

5. Media

- [California CCAs plan \\$65M investment into EV infrastructure, Smart Energy Decisions, 10-28-20](#)
- [\\$65 Million in Funding Going to California Electric Vehicle Infrastructure, Environmental Leader, 10-27-20](#)
- [Four Community Choice Aggregators from the Bay Area and Central Coast of California are funding, PV Magazine, 10-27-20](#)
- [The 60 biggest US cities most prepared for the electric vehicle transition, ranked, GreenBiz, 10-27-20](#)
- [Bay Area, Central Coast CCAs launch \\$65M in EV-charging infrastructure deployment programs to support California's transportation shift, Green Car Congress, 10-27-20](#)

5. Media (Continued)

- [Eight California CCAs join up on huge long-duration storage request for offer](#), Solar Builder, 10-21-20
- [California community choice aggregators issue RFO for long-duration storage](#), The America Public Power Association, 10-20-20
- [California issues first tender for long-duration storage to support wind and solar](#), Renew Economy, 10-20-20
- [California Community Choice groups seek up to 500MW of long-duration energy storage](#), Energy Storage News, 10-19-20
- [The First Major Long Duration Storage Procurement Has Arrived](#), Greentech Media, 10-16-20
- [SVCE launches eHub](#), The Mercury News Community Briefs – Campbell, Cupertino, Los Gatos, Milpitas, Sunnyvale, 10-17-20
- [Reach codes lead to passionate public comment at council meeting](#), Los Altos Town Crier, 09-29-20



SVCE Regulatory and Legislative Update

November 13, 2020

October has been a brisk month for everyone on the regulatory side. For SVCE, work continues on developing the 2021 PCIA, addressing PG&E's application for a mid-2020 PCIA increase, and responding to the September CPUC report on potential expansion of Direct Access ordered by SB 237. For the CPUC, staff are busy processing the Integrated Resource Plans submitted in September, and gave us a Proposed Decision on Resource Adequacy that includes some good news about SVCE's current and future Local RA investments. The August blackouts continue to hang over the regulatory scene overall, but we likely won't know the full extent to which they influence policy until the Commission releases its conclusions from this IRP cycle in early to mid 2021.

The legislative side is in a between-session lull for a moment, but the informational hearing on the blackouts held by the Assembly Energy and Utilities Committee on October 12th gave a preview of what will likely be heightened attention to electricity and specifically reliability in 2021. In the meantime, SVCE is preparing for the session alongside CalCCA and other members of the CCA community.

Regulatory

Ratesetting, Short- and Long-Term

The process of setting the 2021 PCIA is in full swing.. The annual cycle in which PG&E updates both its generation rates and the PCIA (called the Energy Resource Recovery Account or ERRA Forecast proceeding) typically begins on June 1st of every year. This year, due to a combination of the disruptions caused by COVID-19 and the delayed ending of the previous cycle, this start date was pushed back to July 1st. PG&E filed its [Application](#) (A.20-07-002) with initial rate forecasts on July 1st, 2020, a [Supplemental Testimony](#) on July 17th and an [Amended Application](#) on August 14th. As with previous ERRA Forecast proceedings, SVCE is participating jointly with a group of other CCAs in PG&E's service territory. CCA staff and consultants have reviewed PG&E's testimony and workpapers with the usual purpose of identifying accounting errors or costs that have been misallocated. On August 5th, the Joint CCAs filed a [protest](#) to PG&E's application and on August 17th PG&E issued a Reply to the Protest agreeing to a \$26 million reduction in revenue requirement. The Joint CCAs filed Opening Briefs on 10/30 and will file Reply Briefs on 11/16. As of now the official timeline of launching the 2021 PCIA on January 1st has not been altered but given the late start and the 5-month delays in the past two cycles a similar delay in 2021 is very likely.

As discussed in previous updates, the 2020 PCIA that went into effect on May 1st is lower than it would have otherwise been due the implementation of a new cap on year-to-year PCIA increases. The cap reduces rate volatility by preventing the PCIA from increasing more than 0.5¢/kWh in one year. However, that also reduces the rate at which PG&E accumulates the total amount of money the CPUC has authorized it to collect through the PCIA each year. If the undercollection reaches 7% and is projected to reach 10% of the total PCIA revenue requirement, PG&E can increase the PCIA mid-year to make up the difference. **PG&E filed a PCIA Trigger Application on 9/28 noting that the 7% trigger had been reached and proposing to collect the entire balance over 12 months in 2021. This would add about 0.6¢/kWh to the 2021 PCIA on average.**

SVCE also remains actively engaged in **PG&E's 2019 ERRA Compliance proceeding (A.20-02-009)**. As with the ERRA Forecast proceeding discussed above, the ERRA Compliance proceeding happens



annually. This version's purpose is to ensure that PG&E implemented 2019 rates in accordance with the 2019 ERRA Forecast decision, and to identify any discrepancy between PG&E's 2019 revenue requirement and its actual collected revenues so that the appropriate true-up amount can be added to or subtracted from the 2021 rates. The Joint CCAs' early engagement in the proceeding was complicated by difficulty accessing the data required for substantive review of PG&E's performance. PG&E's evasive response to several Joint CCA data requests resulted in CPUC staff convening a workshop on data transparency on May 6th, and the struggle for access to critical data is ongoing on both the regulatory and legislative sides of SVCE's policy work. However, the Joint CCAs were able to access enough information to file testimony on July 10th identifying \$175.3M of reductions that should be made to the amount charged to customers in 2021. PG&E has subsequently agreed to \$110M of that, leaving roughly \$65.3M contested that must be resolved by the end of the proceeding. **The Joint CCAs submitted briefs on the items still contested on 10/19 and will file Reply Briefs on 11/9.**

Finally, SVCE continues to participate jointly with other CCAs in the two phases of **PG&E's 2020-2022 General Rate Case (GRC)**. In Phase 1 ([A.18-12-009](#)), the CPUC establishes PG&E's total revenue requirement for the three-year period. **We are waiting for a Proposed Decision in Phase 1 of PG&E's GRC.** Phase 2 ([A.19-11-019](#)) of the GRC is where the revenue requirement approved in Phase 1 is divided among the various classes of customer (residential, commercial, industrial, etc.). Phase 2 of PG&E's current GRC began in November 2019 with PG&E's [opening application](#). The Joint CCAs filed a [Protest](#) on 1/10/20, PG&E [replied](#) on 1/21/20. On 5/15 PG&E filed an updated testimony which did not impact the Joint CCA issues. **Testimony is due 11/20/20.**

Reliability, aka Resource Adequacy (RA)

[Resource Adequacy](#) is the main program the CPUC uses to protect grid reliability and ensure that there is enough generating capacity on the system to meet demand. The current RA proceeding open at the CPUC is exploring two policy issues in addition to ongoing administration of the RA program: establishment of a Central Procurement Entity (CPE) for Local RA and blue-sky reform of the entire program framework to better reflect the changing nature of California's decarbonizing grid.

The CPE was established by a [Decision](#) in June 2020 that made PG&E and Southern California Edison the CPEs in their respective service territories. CalCCA and PG&E co-chaired the working group that Decision set up to explore unresolved questions about how existing long-term RA contracts should be treated and how LSEs can get meaningful credit for Local RA capacity they procure and show to the CPE. The working group report was presented to the CPUC on 9/1/20, and was addressed by a **new Proposed Decision (PD) released October 23rd. The PD largely accepts CalCCA's proposed mechanism for crediting LSEs for Local RA capacity they have developed or procured, improving the CPE model by preserving LSEs' incentive to invest in new Local RA capacity.**

The second issue, wholesale reform of the RA framework, is in full swing. On 8/7/20, stakeholders submitted proposals for how the RA program could do a better job of ensuring reliability outside the hour of peak demand that is currently its sole focus. Ensuring reliability in hours outside the peak demand hour has become particularly urgent given that the August blackouts occurred not during the peak hour but during the evening as solar production was ramping down. CalCCA submitted a joint proposal with Southern California Edison that would introduce an energy accounting component to complement the program's current capacity requirement. All parties have been reviewing the proposals, and on 9/23/20 the Commission issued a revised schedule for evaluating, refining, and gathering stakeholder feedback on them. **Workshops to discuss the proposals are scheduled for November 18th and 23rd, and there will be several opportunities over the next six months to refine the proposals and submit updated versions.** A



final Decision on RA program reform, which is expected to majorly change the program and its impacts on SVCE procurement, is now forecasted for June 2021.

GHG Reduction Planning, aka Integrated Resource Planning/Plan (IRP)

With individual Load-Serving Entities' (LSEs') IRPs submitted on September 1, 2020, the review and aggregation process has begun at the Commission. CPUC staff will spend the fall and winter reviewing and aggregating them to determine California's GHG emissions trajectory if all LSEs procure according to their IRPs. CPUC staff have already asked all LSEs for some adjustments to the IRP materials in order to facilitate the aggregation process. SVCE staff have complied with these requests and expect the iteration process to continue for the next few months.

On 9/24/20 the Commission released an updated [Scoping Memo](#) in the IRP proceeding that provides more detail on what to expect from the IRP process in the coming year, especially regarding additional mandated procurement. The biggest piece of news in that document is that staff will be conducting a special analysis to identify any additional resources needed to ensure a smooth transition when the Diablo Canyon nuclear plant goes offline in 2024-2025. The results of this analysis are scheduled for release in January 2021, and the Commission could finalize an additional procurement mandate to fill any perceived gaps as soon as May 2021. SVCE will be actively involved in the stakeholder process around this analysis and will incorporate its outcomes into internal procurement planning along with keeping the Board updated.

As noted, this IRP cycle already includes potential for additional procurement mandates similar to the 3,300 MW of incremental capacity [ordered](#) in November 2019 at the culmination of the 2018-2018 cycle. However, the August 2020 blackouts are likely to influence the outcome of this IRP cycle and lead to potentially higher mandates. The Preliminary Root Cause Analysis released jointly by the CPUC, California Energy Commission, and the California System Operator (CAISO) on October 6th identifies changing weather baselines, an outdated reliability framework, and maladaptive features of the CAISO day-ahead energy market as the major contributors to the blackouts. However, the general tone of the regulatory conversation since August has been one of heightened concern over having sufficient capacity on the system. CPUC staff have already reached out to inquire whether any of the projects in SVCE's pipeline can be accelerated, and we expect the mandates coming out of this IRP cycle to be on the side of caution.

Direct Access (DA)

[SB 237](#) (Hertzberg, 2018) expanded CA's DA program by 4,000 GWh and required the CPUC to conduct a study on the implications of fully reopening DA to all nonresidential electricity customers in the state. SVCE has been leading CalCCA's involvement in SB 237's [implementation proceeding](#) at the CPUC. **The draft study, originally set to be released on 3/9/20, was issued on 9/28/20. The study recommends that the Electric Service Providers demonstrate compliance with IRP, RA and RPS requirements before any DA expansion can occur, thus making 2024 the earliest that DA could reopen. CalCCA filed comments and reply comments in response to the study on 10/16/20 and 10/26/20 respectively.** The next step is a proposed decision with a revised study. Although the delay in the study prevented any legislation in 2020, it remains a strong possibility in 2021. Since the program was not fully subscribed in 2021, the remaining capacity will be offered in 2022. PG&E has yet to share the estimated amount of load that will depart in 2022.



Power Charge Indifference Adjustment (PCIA) Reform

Apart from the annual PCIA-setting that happens in the ERRA Forecast proceedings, the PCIA reform proceeding is dedicated to improving the methodology the ERRA uses to calculate the PCIA. This proceeding is also examining some deeper reforms such as allocation of excess investor-owned utility (IOU) resources directly to the CCAs and other load serving entities who's customers pay the PCIA. The proceeding has three working groups, each tackling a different set of issues. Working Group 1 got a [Decision](#) on the first half of its issues in October 2019 and a [second one](#) on remaining issues in March 2020. **The second Decision notably requires the IOUs to show the PCIA as a separate line item on all customer bills by 1/1/21.** This should facilitate more meaningful comparison between SVCE and PG&E generation rates since the PCIA already appears separately on SVCE customer bills. **The IOUs submitted Advice Letters proposing how to implement a PCIA line item on bundled customer bills on August 31st and fall 2020 will be spent on finalizing this process. The Joint CCAs are coordinating with PG&E on their proposal. CalCCA and AReM / DACC filed a joint response to the IOU Advice Letters noting that the proposed changes are an essential first step towards true comparability for bundled and departed load customer bills and need to be changed in a timely manner.**

Working Group 2, which examined options for CCAs to prepay the PCIA if they choose, received a [Final Decision](#) on 8/6. The Decision defines a process by which CCAs could prepay their PCIA, eliminating PCIA volatility and uncertainty in future years while recovering the cost of the prepayment from their customers in a manner of their choosing. The CCA would have to enter negotiations with the appropriate IOU on the amount, payment timeline, and other terms and present these to the CPUC for approval in a joint application. The CPUC could then approve or reject the Application even if both the CCA and IOU support it.

While the Decision is a step in the right direction, the process it defines will make completion of PCIA prepayment deals difficult. The Decision gives the IOUs no requirement or fundamental incentive to enter such deals, so the negotiations leading up to the joint application are likely to be difficult. The Decision also allows the IOUs to charge a risk premium on prepayment deals in order to account for the possibility of PCIA forecasting error, increasing the cost of the prepayment option for CCAs. Another issue with the Decision is that it would require a CCA seeking prepayment to pay for IOU administrative costs associated with the application and even if the application is not approved. However, one positive aspect of the Decision is that it implicitly confirms that the IOUs are capable of providing longer-term PCIA forecasts than they have previously supplied, because a long-term PCIA forecast is necessary to determine the prepayment amount. If these longer-term PCIA forecasts are developed for prepayment purposes, there is potential for them to eventually be incorporated into broader PCIA planning. CalCCA filed [comments](#) on the PD on 7/20 and [reply comments](#) on 7/27. **CalCCA is meeting with other stakeholders like the Direct Access Customer Coalition as it considers filing a petition to modify the Decision.**

Working Group 3, addressing the aforementioned resource allocations, submitted its final report to the CPUC on 2/21/20. The report includes proposals for allocating GHG-free resources, RPS resources, and system/flex/local RA from the IOUs' portfolios to CCAs on a voluntary or involuntary basis (depending on the resource type). **Discussions around these issues are ongoing, and CalCCA along with Working Group 3 co-chairs Southern California Edison and Commercial Energy continue to meet with CPUC staff to**



explain the positions in the report. The working group leads are also in discussions with PG&E. A final Decision from the Commission on these allocation proposals was originally expected in Q2 2020, and is now expected before the end of 2020.

Legislative

With the 2020 legislative process complete, attention has turned to planning for 2021. This includes developing bill ideas as well as off-season outreach to legislators to share updates about our programs and procurement. Post-election, it will also involve establishing relationships with the four new members of SVCE's legislative delegation who will be replacing Assemblymember Chu and Senators Hill, Beall, and Monning. Thank you again for all the outreach to legislators that the Board has provided over the years and we look forward to being even more engaged in 2021.

On October 12, the Assembly Utilities and Energy Committee held an informational hearing on the rotating blackouts that took place in August. Though no specific action came out of the hearing, comments from members of the committee indicated that the legislature will likely be paying more attention than usual to the electricity sector during the 2021 session. There was interest from several legislators in long-duration storage as a reliability tool, so the timing of SVCE's release of the joint RFO for long-duration storage has been very helpful.

Finally, Laura Shybut, Senator Hill's current Chief of Staff, has been named the new Chief Consultant on the Assembly Utilities and Energy Committee. This is the most important committee in the Assembly for SVCE-relevant legislation, so it's great news to have someone in this post who is familiar with the CCA model and with SVCE specifically. We look forward to working with her in her new capacity.

	NOVEMBER 2020	DECEMBER 2020	JANUARY 2021	FEBRUARY 2021
MILESTONES				
ADMINISTRATION, POLICIES, ETC.	<p>Board of Directors, November 13:</p>	<p>Board of Directors, December 9: <u>Consent:</u> Minutes September 2020 Treasurer Report</p> <p><u>Regular Calendar</u> Outgoing Board member recognition Super JPA Legislative Platform</p>	<p>Board of Directors, January 13: <u>Consent:</u> Minutes October 2020 Treasurer Report</p> <p><u>Regular Calendar</u> Incoming Board member recognition Chair/Vice Chair Selection Executive Committee member selection</p>	<p>Board of Directors, February 10: <u>Consent:</u> Minutes November 2020 Treasurer Report</p> <p><u>Regular Calendar</u> Committee Selection</p>
	<p>Executive Committee, November/December meeting: Nov. 23, 11 a.m.: SVCE Customer Awareness/Preferences Survey Readout</p>	<p>Executive Committee, December: N/A</p>	<p>Executive Committee, January: TBD</p>	<p>Executive Committee, February: TBD</p>
	<p>Finance and Administration Committee, Nov. 30, 2pm: New CFO Intro Super JPA Discussion</p>			

SVCE Director Requests Update

Date	Meeting Where Requested	Request/Comment	Comments for Board Report	Department
10/14/2020	BOD Meeting	Explore working with local/regional agencies on automated traffic lights (Dir. Ellahie request)	Staff will contact Dir. Ellahie to discuss the request.	Decarb and Grid Innov.
9/25/2020	Executive Committee	Reach out to the authors of the public comment letter received from The Campaign for Fossil Free Buildings in Silicon Valley re: the Building Decarbonization Joint Action Plan	Dir. of Decarb and Grid Innovation Bailey and Accounts Manager Supp spoke with The Campaign for Fossil Free Buildings in Silicon Valley regarding their letter. Feedback has been incorporated into Building Decarbonization Joint Action Plan.	Decarb and Grid Innov.
8/28/2020	Executive Committee	Policy check regarding duration of contracts before they go back out to bid (Dir. Gibbons)	Purchasing Policy does not currently have a formal duration limit; will update Purchasing policy pending discussion with new CFO	Finance & Admin
8/12/2020	BOD Meeting	Budget dollars for equity programs (Dir. Martinez Beltran)	The Decarb Analyst position SVCE is recruiting will be devoting approximately 50% time on equity and will be bringing forward potential recommendations to enhance equity in SVCE's programs portfolio in 2021.	Decarb and Grid Innov.
6/10/2020	BOD Meeting	Look into demand-side management programs with a vendor diagnostic solution (Dir. Sinks)	Staff is currently evaluating this type of program through an Innovation Onramp pilot program (agreement is in progress)	Decarb and Grid Innov.
6/10/2020	BOD meeting	Diversity in wind for future contracts (Dir. Sinks)	Staff is taking this into consideration for future contracts	Power Supply
4/8/2020	BOD Meeting	Include footnotes in Power Content Label to clarify nuclear power for SVCE (if shown)	Nuclear will first appear on SVCE PCL in 2021	Account Services & Comm



Staff Report – Item 3

Item 3: Adopt Resolution to Approve Building Decarbonization Joint Action Plan, Program Briefs for Cornerstone Programs & Budget Allocation Adjustment for Implementation

From: Girish Balachandran, CEO

Prepared by: Aimee Bailey, Director of Decarbonization and Grid Innovation
John Supp, Manager of Account Services

Date: 11/13/2020

RECOMMENDATION

Staff recommends the Board adopt Resolution No. 2020-33 to approve the Building Decarbonization Joint Action Plan (Attachment 2), new program briefs for the six cornerstone programs contained therein (Attachment 3), and a budget allocation of \$2M per fiscal year for FY21-FY23 for implementation.

EXECUTIVE COMMITTEE RECOMMENDATION

Staff presented the Building Decarbonization Joint Action Plan (abbrev. "Plan") to the Executive Committee at their September meeting. The Executive Committee unanimously supported the staff proposal. Multiple members of the Executive Committee and public commenters highlighted the need for extensive public education and awareness of building decarbonization to "win hearts and minds". The Campaign for Fossil Free Buildings in Silicon Valley provided written comments in support of the Plan and requested refinements. Staff made several updates to the Plan in response to Executive Committee and community feedback from the meeting and follow-up conversations, as shown in redline in Attachment 2. Specifically, the updated Plan clarifies activities focused on public education, includes a clear definition of "building decarbonization" and broader context (specifically, that we are excluding embodied carbon and focusing on operational carbon), and emphasizes outreach to the professional community (architects, designers, developers).

BACKGROUND

Silicon Valley Clean Energy (SVCE) Board of Directors approved the development of the Building Decarbonization Joint Action Plan (abbrev. "Plan") at their February 2020 meeting. The purpose of the Plan is to articulate a shared vision and course of action for how SVCE and Member Agencies can build on progress of the reach code initiative and other programs to decarbonize the built environment. Staff engaged Integral Group to support the development of the plan. Plan development took place from March through October 2020, and involved extensive stakeholder input. Figure 1 provides a summary of the development process.

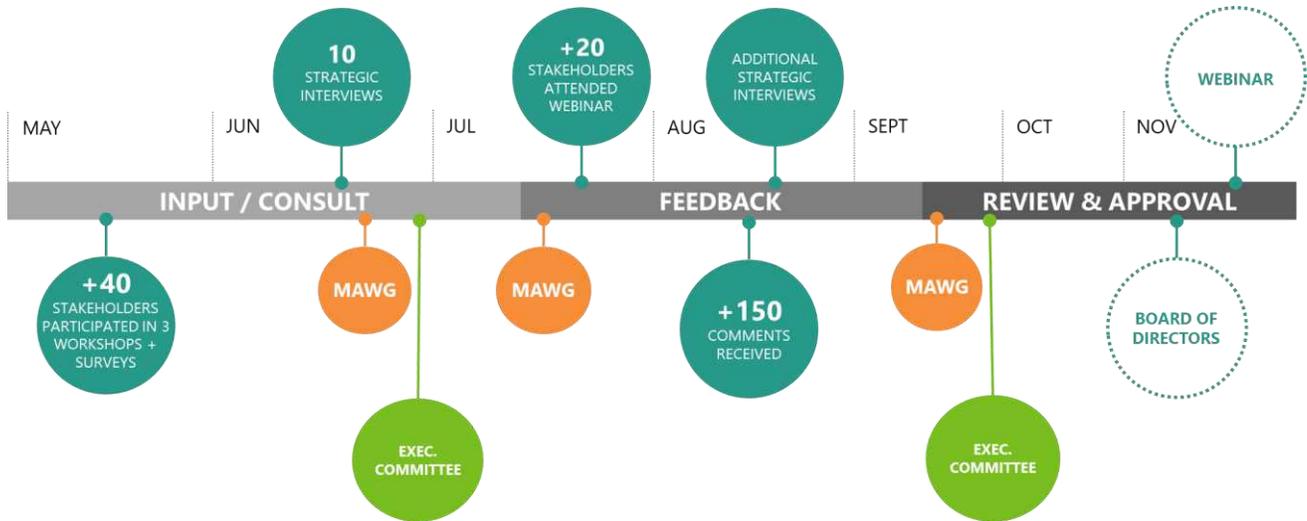


Figure 1: Timeline of Stakeholder Engagement & Plan Development

ANALYSIS & DISCUSSION

Plan Organization & Cornerstone Programs

The Plan is organized into three focus areas: New Construction (NC), Existing Buildings (EB), and Market Development (MD). Each focus area includes one or more cornerstone actions (or “programs”) that are a strategic focus both in terms of impact and anticipated level of resource investment. These proposed actions are designed to be a strategic deployment of limited resources that will address known barriers to building decarbonization. External funding and partners will be leveraged where feasible to amplify the effectiveness of our efforts. The programs are:

- **Reach Code 2.0 (NC):** Evaluate the initial Reach Code Initiative and develop a second wave of Reach Code support that includes all new construction types as well as renovations.
- **Feasibility Assessment for Natural Gas Phase Out by 2045 (EB):** Carry out technical, economic and legal feasibility assessment of pathways to phasing out natural gas service by 2045.
- **Local Policy to Decarbonize Existing Buildings (EB):** Support Member Agencies in evaluating feasible pathways to regulate existing building emissions and develop model policy approaches.
- **FutureFit Homes & Buildings (EB):** Provide comprehensive assistance to SVCE customers in navigating and accessing non-SVCE led energy programs and identify and address incentive gaps and layering opportunities.
- **Accessible Financing (EB):** Assess feasibility of financing mechanisms to unlock equitable financing, particularly for low-income communities.
- **Regional Coordination (MD):** Initiate regular regional stakeholder meetings to coordinate program alignment; streamline access to incentive funds; identify strategies to lower costs; inform messaging and communication needs; and assess barriers and opportunities to workforce development.

Additional detail for each program is included in the program briefs in Attachment 3. These new proposed initiatives are designed to integrate with and complement existing priorities, including for instance the promotion of the eHub to support customer education and action; participation in “The Switch is On” regional positive messaging campaign organized by the Building Decarbonization Coalition; a comprehensive retail rates assessment to lower barriers to decarbonization; “FutureFit Fundamentals” contractor training; Innovation Onramp to pilot promising new technologies; the “virtual power plant” initiative that includes grid-interactive efficient buildings; and ongoing state and regional policy coordination and advocacy.

Proposed Budget and Tentative Timeline for Implementation

To implement the Plan, Staff request a budget allocation of \$2M per year for FY21 through FY23 and propose the tentative phased timeline for beginning program development shown in Table 1. The budget and tentative

Agenda Item: 3**Agenda Date: 11/13/2020**

timeline were constructed based on Staff knowledge of costs to implement similar programs, the anticipated staff resource impact to both SVCE and Member Agencies, the development and deployment timeline of other SVCE-Board--approved program priorities, ease of roll-out, and external factors such as the timeline of the 2022 building code cycle.

Deployment Phase	Cornerstone Actions
Phase 1 (2021)	<ul style="list-style-type: none"> • Reach Code 2.0 (NC) • FutureFit Homes & Buildings (EB) • Regional Coordination (MD)
Phase 2 (2022)	<ul style="list-style-type: none"> • Feasibility Assessment for Natural Gas Phase Out by 2045 (EB) • Local Policy to Decarbonize Existing Buildings (EB) • Accessible Financing (EB)

Table 1: Tentative Phased Timeline for Beginning Program Development

STRATEGIC PLAN

The proposal supports SVCE's updated 2020-2021 Strategic Plan Goal 9, which is to "coordinate development of decarbonization strategy, lead design of local policy and programs, and support program deployment", to support the achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030.

FISCAL IMPACT

Through the annual budget process, the Board approved 2% of annual operating revenues for programs. The proposed funding allocation adjustment of \$2M per fiscal year for FY21-FY23 to implement the Plan remains within the approved programs budget. Therefore, the staff proposal has no incremental fiscal impact.

ATTACHMENTS

1. Resolution No. 2020-33 to adopt the building decarbonization joint action plan, six new program briefs, and budget allocation for implementation
2. Building Decarbonization Joint Action Plan
3. New program briefs for six cornerstone actions:
 - Reach Codes 2.0
 - Feasibility Assessment for Natural Gas Phase Out by 2045
 - Local Policy to Decarbonize Existing Buildings
 - FutureFit Homes & Buildings
 - Accessible Financing
 - Regional Coordination

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2020-33

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY TO APPROVE THE BUILDING DECARBONIZATION JOINT ACTION PLAN, NEW PROGRAM BRIEFS AND A BUDGET ALLOCATION ADJUSTMENT FOR IMPLEMENTATION

WHEREAS, the Silicon Valley Clean Energy Authority (“Authority”) was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, the Board adopted 2021, 2025 and 2030 greenhouse gas emissions reduction targets; and

WHEREAS, the Board approved Operating Budgets for Fiscal Year (FY) 2018-2019 and FY 2019-2020 that provide for funding from 2% of energy sales to support decarbonization and grid programs; and

WHEREAS, the Board adopted the Decarbonization Strategy and Programs Roadmap (“Roadmap”) and an initial budget allocation for the implementation of decarbonization programs pursuant to the Roadmap on December 12, 2018 by Resolution No. 2018-20; and

WHEREAS, SVCE staff has returned to the Board with requests for revisions to the budget allocation as decarbonization programs are developed that are consistent with the Roadmap; and

WHEREAS, the Board adopted Resolution Nos. 2019-02, 2019-07, 2020-01, 2020-06, and 2020-08 to amend the initial budget for decarbonization programs by approving allocations for the electric vehicle service equipment (EVSE) incentive program, workforce development and training activities, the heat pump water heater program, building decarbonization joint action plan, resilience at community facilities, streamlining community-wide electrification, and the reach code initiative; and

WHEREAS, SVCE staff developed the Building Decarbonization Joint Action Plan from March through October of 2020 with member agency staff and through a comprehensive, stakeholder-driven process to identify how to efficiently and effectively prioritize and leverage SVCE resources for the coming approximately three years to accelerate building decarbonization.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy

Authority does hereby resolve, determine, and order as follows:

Section 1: The Building Decarbonization Joint Action Plan (the “Plan”), as shown in Attachment 2, is hereby adopted.

Section 2: The new program briefs for the six cornerstone programs identified in the Plan, attached hereto as Attachment 3, are hereby adopted.

Section 3: The budget for decarbonization programs adopted by Resolution No. 2018-20 and amended by Resolution Nos. 2019-02, No. 2019-07, No. 2020-01, No. 2020-06, and No. 2020-08 is hereby amended to allocate \$2,000,000 per fiscal year for Fiscal Years 2021, 2022, and 2023 to implement the Plan.

PASSED AND ADOPTED this 13th day of November, 2020 by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

Chair

ATTEST:

Andrea Pizano, Board Secretary

BUILDING DECARBONIZATION JOINT ACTION PLAN

November 13~~September 20~~, 2020

DRAFT - NOT YET ADOPTED BY SVCE BOARD

This is a printer-friendly version of the Plan. A graphic-intensive version that includes updated figures will be finalized and published after SVCE Board review and approval.

Integral Group for Silicon Valley Clean Energy

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ABOUT THIS PLAN

Building operations are currently responsible for approximately one-third of greenhouse gas emissions in SVCE communities. Rapidly reducing emissions from energy usage in the built environment is critical to meet science-based emissions-reduction targets to address the climate crisis. SVCE and the thirteen Member Agencies developed this *Building Decarbonization Joint Action Plan* ('the Plan') that builds off of the 2018 *Decarbonization Strategy & Programs Roadmap* ('the Roadmap') that ~~identified~~ identifying building sector decarbonization – here defined as removing greenhouse gas emissions from the buildings energy use – as a key priority in meeting the region's climate goals, and the recent reach code effort ('*Reach Code Initiative*') that resulted in ~~eleven~~ of the ~~thirteen~~ Member Agencies adopting decarbonized building and electric vehicle charging infrastructure codes. The purpose of the Plan is to articulate a shared vision for how SVCE and Member Agencies can build on this progress, to continue to work to decarbonize the built environment. It establishes a set of priorities and actions that joint parties have committed to advancing, with a continued focus on activities where local agencies such as SVCE and Member Agencies have highest leverage and influence. It was created through a joint planning process designed to facilitate the emergence of new solutions, cultivate community buy-in, and coordinate peer-to-peer learning. Goals and actions were developed using a combination of research and prior program experience, as well as stakeholder workshops, interviews, and feedback, and filtered through SVCE's Board-adopted strategic framework from the Roadmap.

ACKNOWLEDGEMENTS

The Plan is informed by a robust stakeholder engagement process that included community members, subject matter experts, industry stakeholders, and staff from member jurisdictions. A series of workshops, surveys, and interviews held between April and August formed the basis for the strategies included in this Plan, and we are grateful for the contributions of the following individuals. Please note that acknowledgement of their contributions does not imply their endorsement of the Plan or its contents.

- Aaron Kovach, Infinera
- Adam Albright, Infinera
- Al Gaspari Jr., PG&E
- Aleka Seville, Sonoma County RCPA
- Alice Sung, Greenbank Associates
- Amelie Besson, MidPen Housing
- Amy Egarter, Rocky Mountain Institute
- Andre Duurvoort, City of Cupertino
- Asim Tahir, Google
- Axum Teferra, BAAQMD
- Beckie Menten, East Bay Community Energy
- Bruce Karney, Carbon Free Mountain View
- Bruce Naegel, Sustainable Silicon Valley
- Bruce Mast, Ardenna Energy
- Christine Tam, City of Palo Alto
- David Sawaya, PG&E
- Denise Grab, Rocky Mountain Institute
- Doug Kunz, Sunnyvale Cool
- Eena Maria, Santa Clara County
- Emiko Ancheta, City of Los Altos
- Eric Hansen, SummerHill
- Erin Brewster, City of Mountain View
- Gilee Corral, City of Cupertino
- Hannah Kaye, PG&E
- James Tuleya, Carbon Free Silicon Valley and Sunnyvale Cool
- Jan Berman, PG&E
- Jenny Burg, BayREN
- Kara Gross, Joint Venture Silicon Valley
- Ken Rider, California Energy Commission
- Kristel Wickham, City of Sunnyvale
- Madeline Willett, City of Sunnyvale
- Matt Golden, Recurve
- McGee Young, Recurve
- Melody Tovar, City of Sunnyvale
- Nick Derr, AEA
- Nick Pappas, CalCCA
- Nupur Hiremath, City of Sunnyvale
- Owen Howlett, SMUD
- Panama Bartholomy, Building Decarb Coalition
- Paul Whitman, W-Land Energy Efficiency Group
- Peter Thompson, PG&E
- Peter Turnbull, Peter Turnbull and Associates
- Rachel Kuykendall, Sonoma Clean Power

- Rafael Reyes, Peninsula Clean Energy
- Ram Narayanamurthy, EPRI
- Rory Cox, CPUC
- Scott Blunk, SMUD
- Scott Shell, EHDD Architecture
- Srinidhi Sampath Kumar, California Housing Partnership Corporation
- Steve Attinger, City of Mountain View
- Steve Joesten, Infinera
- Steve Schmidt, Carbon Free Silicon Valley
- Steven Flores, UA Local Union 393
- Susana Mercado, County of Santa Clara
- Tom Kabat, Carbon Free Silicon Valley
- Tony Eulo, City of Morgan Hill
- Tonya Veitch, Santa Clara County

DRAFT

BACKGROUND

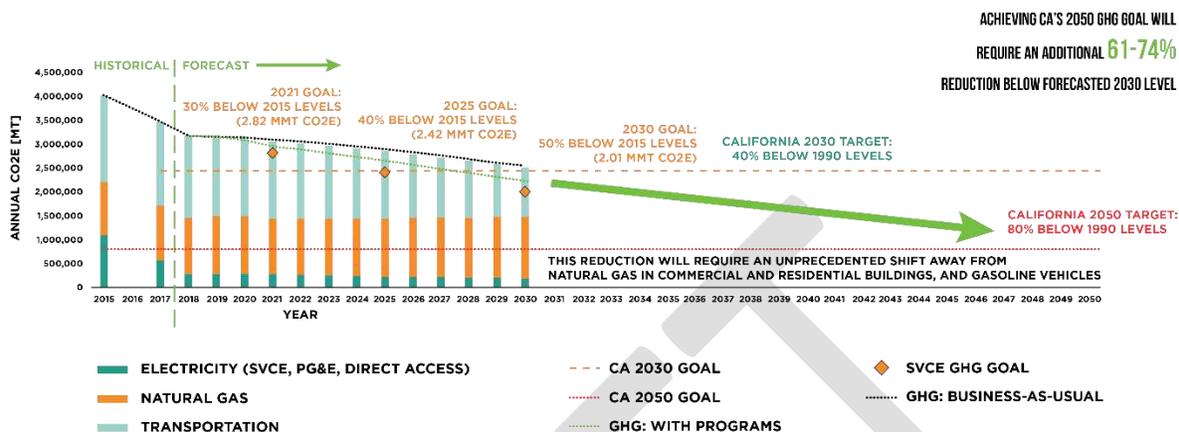


Figure 1: SVCE historical emissions and goals from 2018 Decarbonization Strategy & Programs Roadmap

In December 2018, SVCE’s Board of Directors adopted ambitious goals for GHG emission reductions across the service territory, including the 2025 target of achieving a 40% reduction below 2015 levels, and 50% by 2030 (see Figure 1). These goals are aligned with the level of action needed to contain global temperature rise to within 2 degrees Celsius as outlined in the Paris Agreement.¹ California has further ramped up the timeline, calling for a goal of carbon neutrality by 2045, in acknowledgment of the need to avoid the worst impacts of a warmer climate.² Although important progress has been made to date – specifically in the electricity sector – massive and rapid additional reductions must be further achieved, including reductions within the built environment.³

Neither SVCE & Member Agencies nor California can meet 2030 GHG targets without massive reductions in natural gas use through extensive electrification.⁴ Since natural gas is primarily used for space and water heating, emissions from those uses will increase with population growth no matter how efficiently natural gas is used. While cost-effective energy efficiency measures such as improvements to windows or insulation are fundamental to the electrification—decarbonization

SVCE’s Clean Power Supply

SVCE is committed to providing clean, affordable, and reliable electricity to power the community’s homes and buildings. Customers have two electricity options: GreenStart (carbon free and 50% renewable) and GreenPrime (100% renewable). As of June 2020, SVCE’s investments have surpassed \$1 billion to build and operate long-term renewable energy resources, which equates to 384 MW of generating capacity. Additional generating capacity is in the process of being procured to meet long-term climate goals.

¹ <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

² See Executive Order B-55-18.

³ Cunningham, “California’s Building Opportunity”, 3.

⁴ Williams, “Pathways to deep decarbonization,” xiv.

transition, electrifying the underlying technology is ultimately both necessary and more cost effective than efficiency alone. Finally, GHG inventories and targets customarily only consider emissions at the point of use, but the natural gas extraction, transmission and distribution systems create additional climate and public health risks through the widespread leakage of methane before it even gets to a point of use, which by some estimates amounts to 9% of all natural gas produced.⁵

Decarbonizing Buildings

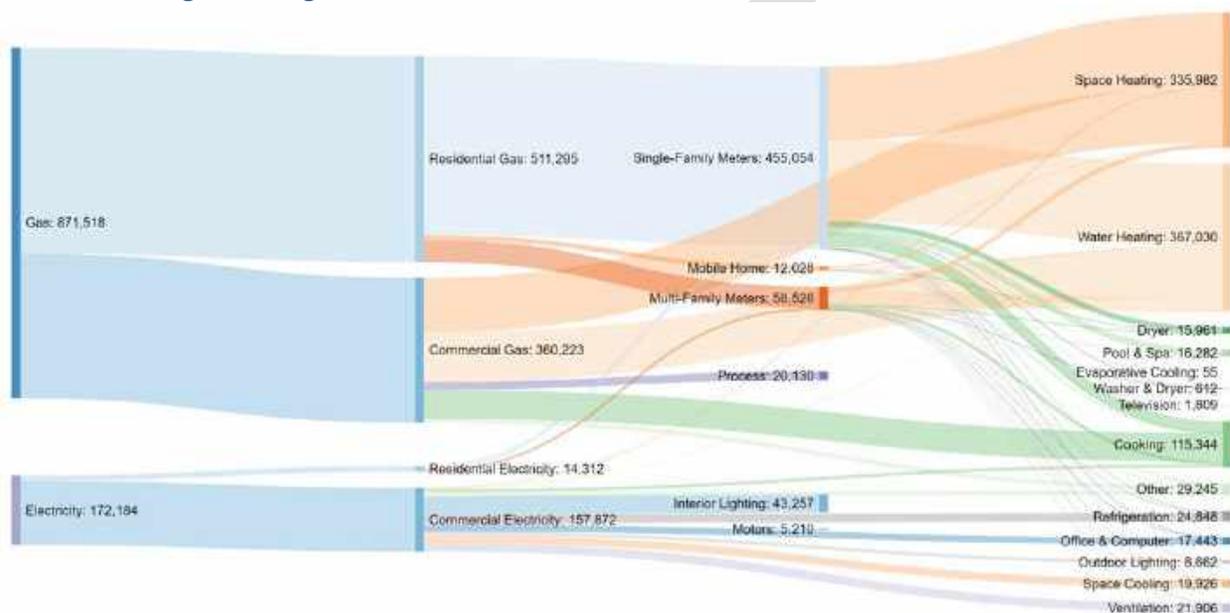


Figure 2: Emissions from the built environment disaggregated by fuel source, sector, and end use

Building **operations** account for approximately one-third of total emissions in SVCE service territory⁶. The majority of building emissions are from natural gas combustion (83%), primarily for space and water heating as seen in Figure 2. As electricity supplies become cleaner, driven by local and statewide renewable energy targets, the percentage of emissions attributed to natural gas will continue to grow.

⁵ <https://www.ucsusa.org/resources/fugitive-methane-emissions#.WYS0SVWG0pp>

⁶ "Building decarbonization" throughout this Plan is referring to reducing energy emissions from the building's energy usage. These emissions are often referred to as "operational carbon", given they refer to emissions associated with operating a building. "Embodied carbon", which are emissions associated with all other stages of a buildings life cycle (e.g. materials, manufacturing, construction, maintenance, demolition/recycling), while important, are not within the scope of the analysis and actions in this Plan.

Electrification refers to the replacement of fossil fuel appliances with advanced electric alternatives that run on clean electricity (see examples in Figure 3).⁷ Although all-electric construction is common in other markets both internationally and in multiple regions of the United States,⁸ in the SVCE service territory, the vast majority of homes and buildings use natural gas heating. In commercial buildings, gas usage intensity varies significantly by sector, with food service establishments being some of the most gas-intensive commercial buildings in SVCE territory.⁹

Energy Resilience

Electrification is the key for building decarbonization, and it will mean more reliance on the electricity system. SVCE has been and continues to explore novel approaches to energy resilience at the micro and macro levels. SVCE is sponsoring grants to Member Agencies to upgrade community facilities to enhance resilience. SVCE is also leading the development of a community-wide resilience plan. Meanwhile, community members can take advantage of SVCE's online resources to get solar and storage quotes or receive a rebate for installing a backup system and participating in an SVCE program to help reduce peak demands on the grid. Energy resilience upgrades must work hand-in-hand with electrification activities to jointly make homes and businesses more prepared for future challenges.

Electric heat pumps – the primary technology for space and water heating – work like a refrigerator, using a refrigerant to move heat or cooling from one area or another. While not a new technology, and used throughout the US and internationally for decades, heat pump technology continues to advance with even greater efficiency in very cold climates and improved refrigerants with low or no global warming potential.

Newer induction cooktops use electromagnetic technology to generate heat, consistently outperforming gas cooktops on Consumer Reports.¹⁰ In contrast to outdated electric resistance technology, induction boils water in half the time, can get to much lower simmer temperatures than gas, is safer in terms of burn risk and indoor air quality, and is cost competitive, making it an increasing trend even in the US.¹¹

Building electrification yields numerous additional benefits for the customer and the grid that make it a high-value climate solution: improved health outcomes,¹² increased energy efficiency, cost effective replacement of heating and cooling in one piece of equipment,¹³ and supply and demand management with smart technologies.¹⁴ In short, electrifying everything and using SVCE's

⁷ See Williams, "Pathways to deep decarbonization" and Mahone, "Deep Decarbonization."

⁸ One in four U.S. homes is all-electric and is even higher in the south. See Deason, "Electrification of buildings," 11 and <https://www.eia.gov/todayinenergy/detail.php?id=39293>.

⁹ SVCE Buildings Baseline Study

¹⁰ <https://www.consumerreports.org/electric-cooktops/the-best-induction-cooktops/>

¹¹ <https://www.reviewed.com/ovens/features/induction-101-better-cooking-through-science>

¹² Brady, "Health Effects from Gas Stove Pollution," 2020.

¹³ Price, 61.

¹⁴ Carew, "Heat Pump Water Heater Electric Load Shifting," 25.

clean electricity supply means that going all-electric is not only better for the climate, but can yield multiple benefits for the customer and community, as well.

The sheer speed and scale of building electrification required to address climate change is unprecedented. It is anticipated that 50% of new water heaters and space conditioning equipment

Electric Vehicle Infrastructure Joint Action Plan

Emissions from transportation comprise the largest source of GHG emissions within SVCE service territory. Vehicle electrification plays an important role in transportation emissions reductions that also aligns with SVCE's core mission and business. In 2019, the SVCE Board of Directors adopted an Electric Vehicle Infrastructure Joint Action Plan and approved \$8 million in charging infrastructure incentives and investments over the FY 2020 – FY 2023 period. That plan identified several initiatives that overlap with those necessary for building electrification, and the already-launched electric vehicle infrastructure programs are being used to gather building-relevant information and tactics to inform the buildout of the initiatives in the Plan. Efforts across these various programs will be streamlined and combined to benefit both transportation and building decarbonization.

sales needs to be all-electric by 2030 in order to meet climate goals without requiring early removal of functioning systems.¹⁵ In contrast, heat pump technologies in SVCE territory are estimated to have less than 5% of market penetration today,¹⁶ meaning that meeting this rapid market transformation will require retrofitting 7,500 homes per year – or 20 homes every day – for the next 10 years, in addition to similar rates of retrofit for commercial and multi-family. This is assuming there is no further expansion of natural gas infrastructure (i.e. all new construction is all-electric).

¹⁵ Mahone, 32.

¹⁶ Price, "SVCE DER Electrification Adoption Potential," 4.

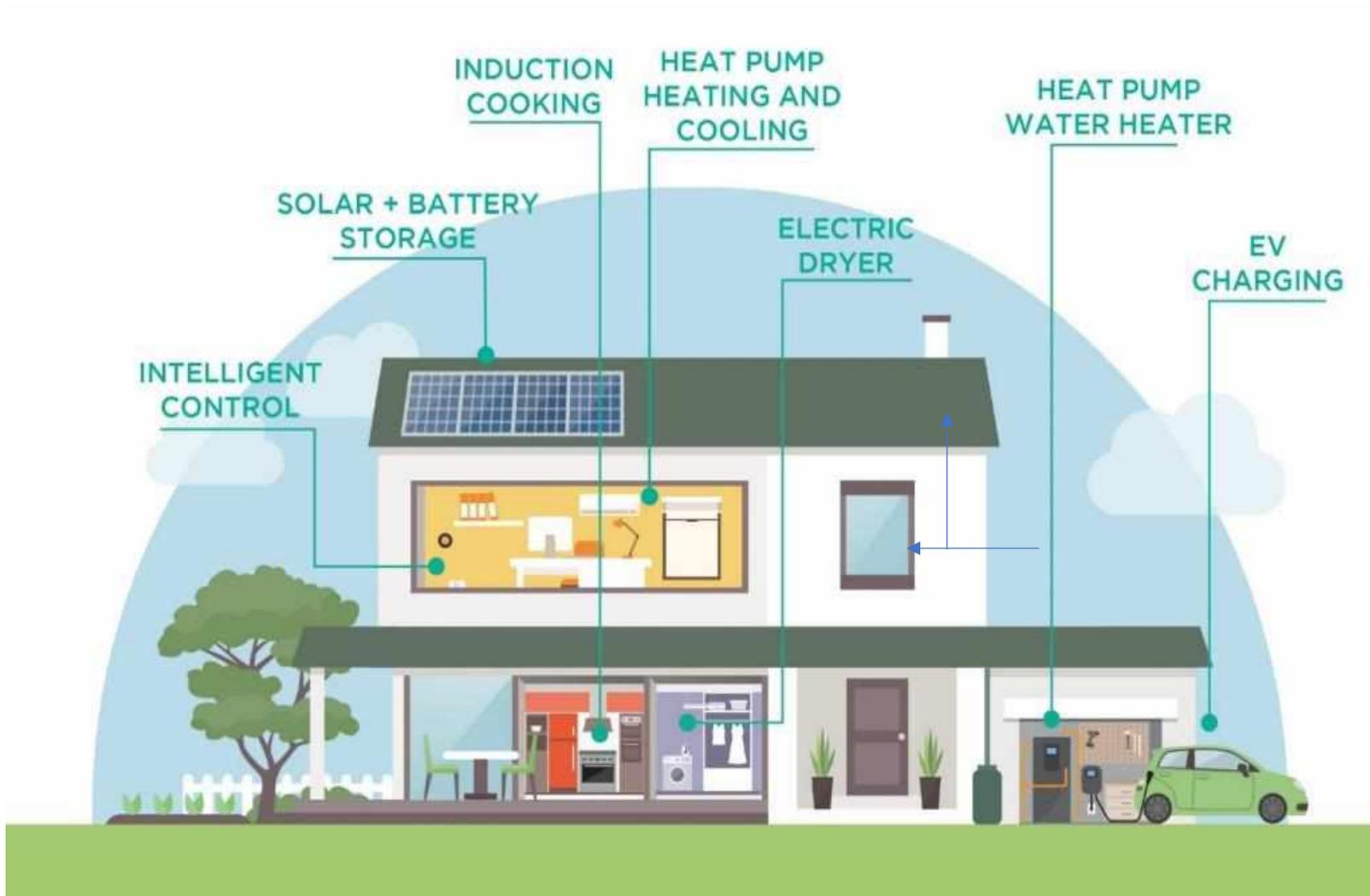


Figure 3: All-electric technologies of a "FutureFit" home

Barriers to Electrification & Opportunities for Intervention

All-electric buildings are common in other parts of the world and even other parts of the **United States**. One in four homes are all-electric nationally and almost half in the south¹⁷ do not use gas. **By** comparison, saturation of electrification technologies in SVCE territory is less than 4%.¹⁸ Given that market adoption is still in its infancy, accelerating building electrification will require tackling a broad set of barriers with a variety of types of interventions beyond incentives alone.

The following list of barriers were identified and developed during the stakeholder engagement process and have been influenced by the Building Decarbonization Coalition's (BDC) *Building Decarbonization Roadmap*, which describes five primary barriers: low awareness & interest, low perceived customer value, low perceived contractor & builder value, low availability, and misaligned policy.¹⁹

Barriers



- Customers, contractors and other stakeholders do not know what electrification means nor do they understand the benefits
- Consumer preference drives opinion rather than technological limitation (e.g. cooking)



- Cost and access to affordable financing is a challenge
- Current incentives and other support programs do not bridge the gap to make electrifying existing buildings cost-competitive, especially for low-income customers



- Lack of consumer demand to incentivize contractors to promote electrification
- Lack of coordination and support from permitting offices and processes



- Lack of adequate supply of available technologies
- Lack of adequate electrical capacity in existing buildings²⁰



- Policies that continue to allow for new gas infrastructure do not align with climate goals
- Lack of relevant, supportive appliance standards²¹
- Changes to policy, codes and standards changes are needed to help bring down the costs of electrification²²

¹⁷ See Deason, "Electrification of buildings," 11 and <https://www.eia.gov/todayinenergy/detail.php?id=39293>.

¹⁸ Price, "SVCE DER Electrification," 30.

¹⁹ The structure of the barriers in the BDC Roadmap influenced those described here and were validated and reinforced through stakeholder surveys and workshops carried out in the development of this Joint Action Plan.

²⁰ Three-quarters of homes in SVCE territory were built before 1970, indicating that many of these residences will require electrical panel upgrades in order to accommodate electrification according to the Building Decarbonization Coalition's "Decoding Grid Integrated Buildings Report."

²¹ Until recently, energy efficiency standard requirements prevented rebates for fuel-switching. A recent update to 1990s era policy regulating funding for energy efficiency – commonly known as the "three prong test" – has opened the door to using public energy efficiency dollars for technologies that also allow for fuel switching.

²² Mahone, 3.

California is in the early stages of building decarbonization, and all strategies from incentives to education to research and development are needed to accelerate market adoption. Interventions described in this plan fall into the following four categories.

Interventions



Retail Products & Services

- Develop and support **innovative new products and services** to meet customer needs and decarbonize.
- Increase equitable access to quality building electrification retrofits through **accessible financing and incentives** as well as drive down first costs.
- **Building-grid integration** can enable grid services such as capacity, resiliency, load balancing, and carbon reduction to unlock new value streams.



Education & Outreach

- Increase **public awareness and education** on electrification and actions to reduce emissions.
- Shift **consumer preference** and establish demand by communicating the positive benefits of building electrification for health and the climate.



Public Policy

- Expand state and local **policy activity** on decarbonization, while strengthening local and regional agency coordination.
- Align policies to maximize awareness of and interest in building decarbonization, the value proposition, and the industry's ability to meet rising demand.



Market Transformation

- Catalyze market transformation through coalitions and partnerships with actors in industry and the innovation ecosystem
- Build industry capacity through **workforce development** to deliver and value electrification.
- Foster **regional coordination** to share information and develop a regional approach to collective action.
- Support **innovation** to address key technical, market and policy barriers to achieving building decarbonization.

State & Regional Context

Countering decarbonization barriers requires a multi-pronged, coordinated approach that incorporates a variety of types of interventions carried out by multiple agencies and stakeholders. While much more needs to be done, there has and continues to be tremendous activity at the state and regional level on building decarbonization. The actions in this Plan have been developed with these activities and context in mind, to recognize where SVCE and Member Agencies are best suited to intervene given their respective areas of control and influence. Key activities taken into consideration include the following.

- *Aligning the state building code:* The California Energy Commission (CEC) updates Title 24 - California Building Energy Efficiency Standards - every three years and the 2022 code cycle is anticipated to address several of the current code barriers to electrification.
- *Assessing pathways to deep building decarbonization in California:* AB- 3232 – Zero-emissions buildings and sources of heat energy requires that by January 2021, the State

Energy Resources Conservation and Development Commission will issue a feasibility assessment of the potential for the state to reduce ~~emissions of~~ GHGs in the residential and commercial building stock by at least 40% below 1990 levels by 2030.

- *Statewide funding for building electrification: SB- 1477* – Low-emissions buildings and sources of heat energy requires the development of two new pilot programs that will direct \$200 million in funding over the next four years towards building decarbonization: the Building Initiative for Low Emissions Development (BUILD) and the Technology and Equipment for Clean Heating (TECH).
- *Transitioning off natural gas:* The California Public Utilities Commission has launched a 3-phase *Natural Gas Planning Proceedings* to anticipate and plan for a long-term strategy for transitioning away from natural gas in order to meet California’s climate goals in such a way that it maintains safety, reliability, and affordability. PG&E has also signaled its support for electrification through a letter to the CEC regarding the 2022 code update.²³
- *Expanded access to funding for electrification:* Incentives are primarily rate-payer funded energy efficiency programs, which after recent changes to state regulation now allow for fuel substitution.²⁴ BayREN, PG&E, BAAQMD, and others are now offering rebates and incentives for all-electric technologies in addition to traditional energy efficiency measures.

The Role of SVCE & Member Agencies

SVCE and Member Agencies can play a role in the larger building decarbonization effort by catalyzing local adoption of building electrification and demonstrating the viability of different strategies to help influence and support external stakeholder efforts. SVCE’s core role includes its ability to develop, craft, and fund retail products and services that raise awareness, bring down the costs of electrification, and bring together stakeholders to collectively catalyze market transformation. Member Agencies can accelerate the transition through key policy initiatives as well as remove barriers to electrification inadvertently embedded in local codes and standards. The Reach Code Initiative is an excellent example of the power of partnership between SVCE and Member Agencies. Through SVCE’s technical and financial support and regional collaboration, twelve of the thirteen Member Agencies have adopted or are in the process of reviewing proposals for reach codes.

²³ PG&E recently issued a letter to the CEC in support of promoting electrification in the 2022 code update. See <https://www.utilitydive.com/news/a-critical-milestone-pge-first-gas-electric-iou-to-publicly-support-cal/580598/>

²⁴ Often referred to as the “three-prong test”, the 1990 era policy required that any energy efficiency measures using public benefits funds would reduce energy use, benefit the environment, and be cost-effective. This resulted in customers only being able to receive rebates for more efficient versions of existing appliances (e.g. a better gas furnace) but not for fuel-switching. In August 2019, the CPUC approved a decision to modify the test, which stood as a barrier to funding electrification measures. See <https://www.nrdc.org/experts/merrian-borgeson/ca-billion-efficiency-now-open-electrification#:~:text=The%20billion%20dollars%20spent%20annually,space%20heating%20and%20hot%20water.>

SPHERES OF CONTROL

SVCE

- Clean Energy Supply
- Electricity Generation Rates
- Grid Integration
- Regional Coordination
- Financing & Incentives
- Innovation
- Public education

Member Agencies

- Local Codes, Standards & Policies
- Permitting
- Land Use Planning
- Municipal Buildings
- Public education

SPHERE OF INFLUENCE

Other Stakeholders

- State Codes, Standards and Policies
- Regional Codes, Standards & Policies
- State & Regional Customer Programs
- Electric Grid Service, Rates & Modernization
- Industry Associations & Coalitions
- Environmental NGOs
- Manufacturers
- Labor & Workforce Associations
- Other CCAs, Local Governments, and Utilities

Figure 4: Spheres of control and influence for SVCE & Member Agencies

STRATEGIC FRAMEWORK

The actions in this Plan have been developed using the strategic framework outlined in the *Decarbonization Strategy & Programs Roadmap* (Roadmap), which was adopted by SVCE's Board of Directors in 2018. The strategic framework sets the parameters for achieving SVCE's ambitious climate goals, articulating what we will do, how we will leverage, and what priorities will guide us.

This Plan builds upon the Roadmap, identifying specific actions to decarbonize the built environment guided by the same three-part strategic framework described below. Actions are identified under the four primary interventions: retail products & services, education & outreach, public policy, and market transformation. Each action leverages innovation, data, and partnerships and has been evaluated to make sure that they meet SVCE's five priorities: customer & community value, emissions impact, scalable & transferable, equity in service, and core role for SVCE.

What will we do?



Retail Products & Services

Retail Products & Services: Develop and support innovative new products and services to meet customer needs and decarbonize



Education & Outreach

Education & Outreach: Increase public awareness and education on electrification and actions to reduce emissions



Public Policy

Public Policy: Expand state and local policy activity on decarbonization, while strengthening local and regional agency coordination



Market Transformation

Market Transformation: Catalyze market transformation through coalitions and partnerships with actors in industry and the innovation ecosystem

How will we leverage?



Innovation

Innovation: Harness innovation to continuously improve service to our customers and community, and to accelerate "bending the carbon curve"



Data

Data: Unlock the tremendous value of utility and other data to guide development, implementation, measurement and evaluation of all program activities



Partnerships

Partnerships: Form and leverage partnerships to support activities addressing our decarbonization mission

What priorities will guide us?



Customer & Community Value

Customer & Community Value: Deliver value to our customers and larger community through program offerings and ongoing initiatives



Emissions Impact: Prioritize activities with greatest emissions reduction potential to achieve alignment with our mission



Scalable and Transferable: Pursue solutions that can be expanded and adapted by others, to ensure impact both within and beyond our borders



Equity in Service: Balance activities to reflect the diversity of our customer base and geography



Core Role for SVCE: Recognize activities where we can and must play a key role given our unique position of community-owned electricity provider

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ACTION PLAN

This action plan is designed to be flexible and adaptable given the rapidly changing landscape of climate action and building decarbonization in California and in the region. The objective of these sets of actions is to strategically deploy limited resources to address the barriers described previously by shifting consumer preference and establishing demand; driving down costs; fostering supply chain and quality installations; and cultivating supportive policy. Each action aims to leverage external funding and partners where available to amplify the effectiveness of every dollar spent.

The Plan is organized into three focus areas: New Construction, Existing Buildings, and Market Development. Each focus area includes one or more Cornerstone Actions that are a strategic focus both in terms of impact and anticipated level of resource investment. For each individual action, the category of activity is specified, which is one of the following from the Decarbonization Roadmap Strategic Framework: Public Policy; Products & Services; Education & Outreach; and Market Transformation. Furthermore, the specific barrier(s) that each action is intended to address are also noted.

The action plan includes an additional section describing Existing & Supportive Actions, which are priority programs that have already been approved by the SVCE Board of Directors and are in various stages of development, as well as Supportive Actions that enable larger initiatives but may require lesser effort.

New Construction

Electrifying new construction is critical to limit or prevent increasing emissions from the building sector. Stopping further development of fossil fuel infrastructure in our communities is fiscally prudent, in that gas infrastructure and appliances are stranded assets that will be difficult and expensive to retrofit later. Studies have demonstrated that all-electric new construction is cost-effective for most building types²⁵ but changes to policy, codes and standards are needed to help drive market adoption.²⁶ Policies have the benefit of providing long-term market certainty about a collective direction and can also drive adoption at scale in a way that education and incentives cannot.²⁷ Policies like reach codes advance building decarbonization cost-effectively by building demand, while expanding market awareness and readiness to be able to address existing buildings as well.

SVCE and Member Agencies will work to further advance building codes and standards development and embark on a Reach Code 2.0 initiative to address broader aspects of the built environment.

<i>Activity Type</i>	<i>Barriers Addressed</i>	<i>Cornerstone Actions</i>
 Public Policy	 Misaligned Policy	<p><u><i>NC1: Reach Code Initiative 2.0</i></u> Evaluate the initial Reach Code Initiative in the 2019 building code cycle, assess gaps in application, and develop a second wave of Reach Code support that includes all new construction types as well as renovations (remodels and additions), regional alignment in approach, and potential new technology focus areas (e.g. energy storage). Assess the 2022 code (when released) and evaluate opportunity for new reach codes relative to the updated state baseline. Similar to the initial effort, SVCE will support by developing model policies; providing enhanced technical assistance; supplying background information and educational materials for architects and designers, contractors, elected officials, staff, and the general public; and facilitating the stakeholder engagement. SVCE may also provide member agencies with an incentive to defer costs of staff participation.</p>

²⁵ See cost-effectiveness studies developed by the California Codes and Standards Reach Codes Program in 2019: <https://localenergycodes.com/content/2019-local-energy-ordinances/>

²⁶ Mahone, 3.

²⁷ SVCE Distributed Energy Resource & Electrification Potential Assessment

Existing Buildings

While the Reach Code Initiative is a critical step in avoiding new gas emissions, existing buildings pose the biggest challenge for decarbonization given the cost and complexity of retrofits. Emissions from existing buildings make up one-third of service territory wide emissions, the vast majority of which is from natural gas. Almost all single-family homes and the majority of commercial, multi-family and condo buildings are mixed fuel and will need to be retrofitted to achieve climate targets.²⁸

Single-family homes make up 82% of residential square footage in SVCE territory and are, on average, the least efficient gas users in the residential sector. Newer single-family homes, especially those built after 1980, tend to be more energy efficient than their older counterparts. Therefore, pre-1980 homes, which make up two-thirds of single-family homes in SVCE territory, will be an important focus area for decarbonization in the residential buildings sector. Furthermore, around half ~~three-quarters~~ of single-family homes in SVCE territory were built before 1970, indicating that many of these residences will require electrical panel upgrades in order to accommodate new loads.^{29,30} In addition, existing electrical distribution may need to be improved in order to allow for large-scale electrification. Socioeconomically disadvantaged census tracts in SVCE territory have a disproportionately higher share of older single-family homes, lower rates of single-family home electrification, and a higher percentage of residents living in multi-family units.³¹

Whole-home electrification retrofits are highly unlikely to occur without intervention, but incentives alone are not sufficient.³² Specifically, HVAC heat pumps while economical, are low on the adoption curve. Cost effectiveness in commercial building retrofits is also challenging and further measures will be needed to encourage adoption in this sector as well.³³ Given the wide range of gas usage intensities across commercial sectors, sector-specific analyses may also need to be carried out to assess the cost-effectiveness and emissions reduction potential of electrifying different types of commercial buildings. Additionally, low-income communities, renters, condominium owners, and landlords may have lower access to traditional financing, lower ability to pay any upfront costs, less control over building upgrades, and less ability to navigate complex and time-intensive incentive application processes. Ensuring an equitable transition for these communities is a key priority for SVCE and was amplified during the stakeholder engagement process.

²⁸ SVCE Buildings Baseline Study

²⁹ Building Decarbonization Coalition, "Decoding Grid Integrated Buildings Report," 7.

³⁰ SVCE Buildings Baseline Study

³¹ SVCE Buildings Baseline Study

³² SVCE DER Electrification Adoption Potential

³³ Additional cost-effectiveness studies for residential and non-residential buildings were developed by the California Codes and Standards Reach Codes Program in 2019: <https://localenergycodes.com/content/2019-local-energy-ordinances/>

SVCE will support Member Agencies in ~~assessing the feasibility of~~ assessing, developing, adopting, and implementing policy measures to address existing buildings. SVCE will further develop and support products and services including incentives and financing measures to increase equitable access to electrification measures.

Activity Type	Barriers Addressed	Cornerstone Actions
 Public Policy	 Misaligned Policy	<p><u>EB1: Feasibility Assessment for Natural Gas Phase Out by 2045</u> Carry out a feasibility assessment to identify technical, legal and economic barriers and opportunities for phasing out natural gas service by 2045. The results from the assessment may inform future evaluation of potential future SVCE programs and local policies and regulations.</p>
 Public Policy	 Misaligned Policy	<p><u>EB2: Local Policy to Decarbonize Existing Buildings</u> Retrofit or replace-on-burnout (ROB), time-of-sale (TOS), differential utility users tax, energy audits and benchmarking, and building emissions caps are all potential policy levers member agencies can explore to mitigate emissions from existing buildings. Support member agencies in evaluating the feasible pathways to regulate existing building emissions and help develop model policy approaches and supportive programs to enable compliance.</p>
 Retail Products & Services	 Low Perceived Customer Value  Low Perceived Contractor & Builder Value  Low Availability	<p><u>EB3: FutureFit Homes & Buildings</u> Provide comprehensive assistance to SVCE customers in navigating and accessing the many existing and forthcoming, non-SVCE led energy programs providing financial assistance for building decarbonization and energy efficiency, including HVAC, water heating, and cooking. Identify and address incentive gaps and layering opportunities as well as participation barriers, providing precise and targeted additional financial resources, where needed. Prioritization will be on low-income residents, affordable housing providers, and small businesses, as well as customers with high-heat vulnerabilities. SVCE’s FutureFit Heat Pump Water Heater Program will be integrated into this broader program going forward.</p>

Activity Type	Barriers Addressed	Cornerstone Actions
 <p>Retail Products & Services</p>	 <p>Low Perceived Customer Value</p>  <p>Low Perceived Contractor & Builder Value</p>  <p>Low Availability</p>	<p><u>EB4: Accessible Financing</u></p> <p>Assess feasibility of financing mechanisms to unlock equitable financing for energy efficiency and electrification across the region, particularly for low-income communities. Potential strategies to be evaluated include tariffed or more standard on-bill financing, electrification-as-a-service business models, or other opportunities to help overcome financial barriers (first costs, access to credit, etc).</p>

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Market Development

Transitioning away from natural gas will require an unprecedented cultural, technical, and economic shift, but lack of awareness, low perceived value, and low availability are significant barriers to adoption. Market transformation will require a proactive and coordinated effort to increase awareness and demand for building electrification as well as workforce capacity to deliver on that demand. Building community support and interest will in turn develop political will for even deeper decarbonization efforts.

A recent survey of contractor attitudes towards electrification revealed the specific challenges to market transformation. In general, contractors lack awareness and understanding of the benefits and reasons why all-electric technologies are needed and are viable.³⁴ Recommendations from the report include providing incentives to bring down the cost of retrofits; promoting manufacturer trainings to installers; communicating to contractors the business case for electrification; developing marketing materials for sales staff and installers; and offering low or no-interest financing options for low-income customers. These issues were also echoed as a barrier in the stakeholder surveys and workshops for this Plan.

In response, market development initiatives in this Plan focus on expanding regional coordination and workforce development.

Activity Type	Barriers Addressed	Cornerstone Actions
 Education & Outreach	 Low Awareness & Interest  Low Perceived Contractor & Builder Value  Low Availability	<p><u>MD1: Regional Coordination</u></p> <p>SVCE will initiate regular regional stakeholders convenings to coordinate program alignment; streamline access to incentive funds; identify strategies to lower costs; inform the development of the positive messaging campaign and general building decarbonization communication needs; leverage other collective activities around building decarb; and reveal and address barriers to workforce development. Regional coordination will be used to build off existing and forthcoming programs such as TECH and BUILD to develop additional programs to support workforce development. Stakeholders include Member Agencies, local community groups, architects, designers, contractors, labor, affordable housing providers, local building industry stakeholders, business community, BAAQMD, BayREN, other CCAs, PG&E, healthcare agencies, educational institutions, and non-governmental organizations.</p>

³⁴ See BDC hosted “Contractor Needs Assessment” presentation from April 23, 2020: <http://www.buildingdecarb.org/webinars.html>

Existing & Supportive Actions

SVCE has a range of existing complimentary building decarbonization programs in various stages of development and implementation. In addition, ~~s~~Supportive ~~a~~Actions have been identified as part of this Plan that represent ways in which SVCE can leverage its leadership and role as regional convener to bring together external partners around key issues.

Activity Type	Existing & Supportive Actions
	<ul style="list-style-type: none"> • <u>Virtual Power Plant Initiative</u>: Leverage SVCE's "virtual power plant" (VPP) program to pilot grid-interactive efficient buildings, integrating multiple customer resources such as energy efficiency, storage, heat pump water heaters and electric vehicles to provide grid services. Through the pilot, identify and address key technical, market, and/or economic barriers for leveraging buildings for demand flexibility and achieving broad-based deployment. • <u>Retail Rates Assessment</u>: Assess retail rates to develop a multi-phase plan for improvements and development of pilot rates that will remove barriers to building electrification. For example, new time-of-use periods, alternative baselining calculations, dynamic pricing, and subscription models. • <u>Electrical Distribution & Panel Capacity Assessment</u>: Assess electrical distribution and electrical panel capacity limits to accommodate scaled-up building and vehicle electrification as well as novel retrofit solutions for managing increased load, particularly for multi-family and commercial.
	<ul style="list-style-type: none"> • <u>Customer Resource Center</u>: Launch an online resource center to enable engagement and awareness-building, education and action related to understanding clean energy usage for transportation, homes and appliances, vehicle and building electrification. Carry out outbound engagement and proactive communication with our customer base to advance our decarb mission. Please see: svcleanenergy.org/ehub/. • <u>Positive Messaging Campaign</u>: Participate in the Building Decarbonization Coalition's "The Switch is On" marketing campaign with other regional partners. Using the lessons learned from "The Switch is On" and the eHub roll-out, continue to cultivate regional partnership for an ongoing regional marketing effort to promote awareness and public education around electrification. • <u>SVCE's "Watts for Lunch"</u>: Continue to leverage SVCE's "Watts for Lunch" program to educate the commercial and industrial community about building electrification and solicit feedback on needed industry support.

Activity Type	Existing & Supportive Actions
	<ul style="list-style-type: none"> • <u>Streamlining Community-Wide Electrification</u>: Survey and review local city policies (codes, permitting, inspection, incentives, etc.) to support the development of model policies and processes to better enable electrification. Develop a best practice guide for streamlining community-wide decarbonization. • <u>State Policy Coordination & Advocacy</u>: Participate as a stakeholder in state policy proceedings to advocate for the continued advancement of building decarbonization policies, particularly the 2022 Title 24 energy code update, but also AB 3232, SB 1477, and the natural gas planning proceedings. Also advocate for accelerated statewide action to bring down costs of electrification and scale up conversions to meet climate targets. • <u>Regional Policy Coordination</u>: Coordinate with BAAQMD to advance building decarbonization through, for instance, appliance standards, land use planning, innovation and public awareness campaigns.
	<ul style="list-style-type: none"> • <u>FutureFit Fundamentals Contractor Training</u>: Provide COVID-driven workforce relief by expanding awareness of electrification technologies and offering valuable virtual training. Provide immediate financial relief to contractor workforce through installation incentives for relevant technologies. • <u>Innovation Partners & Innovation Onramp</u>: Leverage SVCE's innovation programs to explore key solutions to building decarbonization including "smart panels" and other demand flexibility innovations, district energy solutions, electrification-as-a-service business models, and carbon-free backup power. • <u>Research & Development Support</u>: Advocate to state regulators for additional research on technology development and fuel-switching solutions, as well as research on the co-benefits of building decarbonization including improved health and reduced health care costs. Participate and contribute to research conducted by others on building decarbonization, including R&D priorities identified by BDC.

~~WHAT'S NEXT~~ NEXT STEPS

Meeting climate goals requires rapid and expansion action from a variety of stakeholders to accelerate building decarbonization. Implementation of this Plan is scheduled for the 2021-2023 timeframe.

Progress will be measured and monitored in several ways. First, SVCE will continue carrying out an annual GHG emissions inventory by source and sector, and will evaluate sector-specific reduction targets for both buildings and transportation in the coming two years. Second, SVCE will identify and track several key performance indicators (KPIs) for monitoring progress in the built environment, which may include energy use and emissions intensity by square footage, square footage of new construction and existing buildings that is all-electric, and distributed energy resource deployment (storage, rooftop solar, EV charging, etc.). Consistent with existing program practice, program development for each of the actions in this Plan will include more detail on specific quantifiable outcomes; time-bound targets; required resources; and development of an evaluation, measurement and verification plan.

Progress on Plan implementation will be reported regularly to SVCE's Board of Directors and community. The Plan will be reassessed in approximately three years to determine the next suite of transformative actions.

APPENDIX I: ACTION PLAN SUMMARY

Focus Area Cornerstone Action

Activity Type



Innovation

Data

Partnerships

Customer & Community Value

Emissions Impact

Scalable and Transferable

Equity in Service

Core Role for SVCE

New Construction

NC1: Reach Code Initiative 2.0

Evaluate the initial Reach Code Initiative and develop a second wave of Reach Code support that includes all new construction types as well as renovations.



Partnership with member agencies to further advance building codes, particularly for existing buildings, ~~building off~~ expanding on ~~of~~ success from initial program.



Existing Buildings

EB1: Feasibility Assessment for Natural Gas Phase Out by 2045

Carry out technical, economic and legal feasibility assessment of pathways to phasing out natural gas service by 2045.



Partnership with PG&E, other CCAs, and member agencies to evaluate feasible regional solutions to enable an equitable transition off natural gas by 2045 using a technical and economic analysis.



EB2: Local Policy to Decarbonize Existing Buildings

Support member agencies in evaluating feasible pathways to regulate existing building emissions and help develop model policy approaches.



Partnership with member agencies and regional agencies like BAAQMD to evaluate feasible policy strategies to decarbonize existing buildings.



EB3: FutureFit Homes & Buildings

Provide comprehensive assistance to SVCE customers in navigating and accessing non-SVCE led energy programs and identify and address incentive gaps and layering opportunities.



Partnership with member agencies and other regional entities like BayREN to leverage external funding to maximize access to building decarbonization for customers.



EB4: Accessible Financing

Assess feasibility of financing mechanisms to unlock equitable financing, particularly for low-income communities.



Partnership with PG&E and other CCAs to evaluate most effective equitable financing solution to enable electrification across the region.



Sector *Cornerstone Action*

Category



Innovation



Data



Partnerships



Customer & Community Value



Emissions Impact



Scalable and Transferable



Equity in Service



Core Role for SVCE

Market Development

MD1: Regional Coordination

Initiate regular regional stakeholder meetings to coordinate program alignment; streamline access to incentive funds; identify strategies to lower costs; inform messaging and communication needs; and assess barriers and opportunities for workforce development.



Market Transformation

Stakeholders include Member Agencies, local building industry stakeholders, business community, BAAQMD, BayREN, other CCAs, PG&E, healthcare agencies, educational institutions, and non-governmental organizations.



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DRAFT



SVCE Program Brief – Reach Codes 2.0

November 13, 2020

Summary

Evaluate the initial Reach Code Initiative in the 2019 building code cycle, assess gaps in application, and develop a second wave of Reach Code support to Member Agencies that includes all new construction types as well as renovations (remodels and additions), regional alignment in approach, and potential new technology focus areas (e.g. storage). Assess the 2022 code (when released) and evaluate opportunity for new reach codes relative to the updated state baseline. Similar to the initial effort, SVCE will support by developing model policies; providing enhanced technical assistance; supplying background information and educational materials for architects and designers, contractors elected officials, staff, and the general public; and facilitating the stakeholder engagement. SVCE may also provide Member Agencies with an incentive to defer costs of staff participation.

Key Challenges

At the time of construction is the most cost-effective point to decide to build all-electric and install EV charging infrastructure, yet building codes continue to favor natural gas and omit transportation electrification infrastructure needs.

- Member Agency resources are limited.
- Building codes encourage mixed-fuel buildings
- Developer inertia aligned with mixed-fuel buildings

Goals

- All Member Agencies who adopted reach codes in the 2019 building code cycle maintain progress through the 2022 building code cycle. (reach codes will expire at the end of the building code cycle)
- Continue to support Member Agencies that have not yet considered reach codes.

Program Approach

General

- SVCE hires a reach code consultant, if possible continuing the collaboration with Peninsula Clean Energy, to share costs across the two CCAs and enhance coordination/collaboration across member agencies in both counties
- Similar to initial reach code effort, consultant will map process flow, organize and carry out external stakeholder meetings (architects, designers, contractors, labor, affordable housing providers, local community organizations, etc.), coordinate necessary economic modeling and proposed code language, among other support tasks that can be outsourced by city staffs
- Reach code consultant will manage both building electrification and EV charging infrastructure stakeholder processes
- SVEE may provide incentives to Member Agencies to help defray non-outsourcable resource impacts of pursuing a reach code effort

Target Participants

- Primary -- Member agency staff



- Stakeholders – architects, designers, developers, housing authorities, contractors, builders, labor (among others)

Participation Criteria

- The support services offered herein are open to all 13 member agencies.

Program Evaluation, Measurement & Verification Plan

- EM&V plan will be developed in consultation with SVCE’s consultant ADM

Third-Party Support

- Continue with TRC & DNV-GL or issue RFP to bring on third-party consultant to develop reach codes, organize and manage stakeholder meetings in the development and adoption process, and be a technical resource for our member agencies and SVCE staff/Board.

Resources

- Estimated to require \$400,000 for developing reach codes for the 2022 code cycle (work anticipated to be carried out across FY21-FY23). \$600,000 already approved by the BOD for initial reach code effort will provide continued technical support throughout part of this time period.
- The above figure does not include additional resources that may be provided by Peninsula Clean Energy or other potential project partners for deliverables benefiting multiple CCA member jurisdictions. Staff will continue to leverage regional partnerships where feasible.

Staff Support

- 0.3 FTE in FY21-FY23

Timeline

- 2021 - Assessment of state baseline code, identification of regional partners, issue RFP for consultant support, and begin to engage Member Agency staff and other stakeholders
- 2022 – Regional stakeholder engagement for model code development, support Member Agency staff bringing reach codes through their review process
- 2022 – Deliver reach codes for CEC approval, implementation support

Program Sector & Activity Type

Sector(s)

Activity Type(s)



Leverage



Partnerships

Member agencies & Peninsula Clean Energy or other regional peers (TBC)



Innovation

Builds on the first CCA-driven, multi-jurisdiction ordinance effort, which resulted in 11 of 13 jurisdictions adopting reach codes.



Data

The cost effectiveness and GHG savings models are publicly viewable and may encourage others to adopt the all-electric pathway.

Prioritization Criteria



Customer & Community Value

All-electric buildings and transportation electrification provide a lower cost, simpler, healthier, and safer alternative to their fossil fuel counterparts.



Emissions Impact

By selecting the all-electric pathway, buildings are effectively guaranteed to remain so, thereby providing decades of GHG reductions.



Scalable and Transferable

Much of the cost/benefit analyses necessary for reach codes are usable by other cities within the same climate and utility zone. Member Agencies who have adopted reach codes may encourage other Member Agencies to do the same.



Equity in Service

All-electric buildings and transportation electrification improves health and safety, which are typically more impactful to disadvantaged communities.



Core Role for SVCE

Aligns well with SVCE's role as regional convener and facilitator of improvements within and between our member agencies.



SVCE Program Brief – Feasibility Assessment for Natural Gas Phase Out by 2045

November 13, 2020

Summary

Carry out a feasibility assessment to identify technical, legal and economic barriers and opportunities at the local level for phasing out natural gas service by 2045. This assessment will be informed and framed by a compilation and synthesize statewide and regional studies, and the application of those studies to local conditions. The results from the assessment may inform SVCE's programs portfolio development going forward, as well as future evaluation of potential local policies and regulations at Member Agencies.

Key Challenges

Statewide studies have been conducted and others are underway to assess pathways to meeting the state target of carbon-neutrality by 2045, which informs state regulation. However, those studies lack resolution and insight on the resultant implications for our communities, where there may be unique challenges or opportunities.

Goals

- Provide relevant and timely information to inform local policy development and action at one or more Member Agencies and support our communities in navigating upcoming state regulations.
- Inform ongoing decarbonization strategy and program portfolio development

Program Approach

General

- Work with Member Agency staff to develop and finalize the scope of the work.
- Issue an RFP to select consultant(s) to carry out the work.
- Provide Member Agency staff with updates and opportunities for input at key milestones throughout the process.

Target Participants

- Input from Member Agency staff will shape the work, during the scoping as well as implementation of the assessment.

Participation Criteria

- The assessment will be available to and relevant for all 13 Member Agencies.

Program Evaluation, Measurement & Verification Plan

- This type of assessment will not require EM&V.

Third-Party Support

- SVCE will issue an RFP to seek third party consultant support for this effort.

Resources

- Estimated at \$300,000 for legal and technical consulting support. Staff will seek regional partners for this initiative, which could result in cost-share.



Staff Support

- 0.3 FTE in FY22

Timeline

- 2022 – Finalize scope of assessment, issue RFP for consultant support, and carry out the work

Program Sector & Activity Type

Sector(s)

Activity Type(s)



Leverage



Partnerships

Leverages partnership with Member Agencies; will also seek partnerships with regional agencies



Innovation

Will be one of the – if not the – first CCA-led studies on local technical, legal and economic barriers/opportunities to achieving statewide 2045 carbon neutral target



Data

This effort is a data-driven initiative that will leverage key internal and external data sources to enrich the analysis and resultant insight

Prioritization Criteria



Customer & Community Value

This assessment will help inform SVCE program development and local policy discussions and action in our Member Agencies, to better position our communities to navigate increasing state regulation to achieve the 2045 statewide target



Emissions Impact

The study results will inform subsequent analysis on viable pathways for achieving our greenhouse gas emission targets.



Scalable and Transferable

The study is intended to reflect local conditions and highlight challenges and opportunities in our communities; nevertheless, the results may be transferable and scalable to other similar communities



Equity in Service

The assessment will look at every customer segment and every community to understand impacts across distinct members of our customer base.



Core Role for SVCE

Carrying out such an assessment on a regional basis balances wanting to achieve economies of scale while still reflect relevant local conditions.



SVCE Program Brief – Local Policy to Decarbonize Existing Buildings

November 13, 2020

Summary

Member Agencies have a variety of policy levers that they can explore to mitigate emission from existing buildings, including for instance retrofit or replace-on-burnout (ROB), retrofit at time-of-sale (TOS), differential utility users tax between natural gas and electricity utility usage, mandatory energy audits and benchmarking, and building emissions caps. SVCE will support Member Agencies in evaluating feasible pathways to regulate existing building emissions, carrying out stakeholder engagement, developing model policy approaches, and supportive programs to enable compliance.

Key Challenges

- Existing policies that continue to support fossil fuel infrastructure are misaligned with climate action
- Contractor, labor and consumer inertia aligned with mixed-fuel buildings
- Member Agency resources are limited

Goals

One or more Member Agency adopts a local policy option to address emissions from existing buildings

Program Approach

General

- Compile a suite of local policy options for consideration, informed in part from initial results from another cornerstone action, the feasibility assessment of achieving a natural gas phase out by 2045. Develop and apply a framework for comprehensive assessment of the options, to narrow it down to one to three promising policy approaches.
- For the one or more identified set of policy options, similar to reach code effort, map process flow, organize and carry out external stakeholder meetings, coordinate necessary economic modeling and proposed language, among other support tasks that can be outsourced by city staffs
- SVCE may provide incentives to Member Agencies to help defray non-outsourcable resource impacts

Target Participants

- Primary -- Member Agency staff
- Stakeholders – architects, designers, developers, housing authorities, contractors, builders, labor (among others)

Participation Criteria

- The support services offered herein are open to all 13 member agencies.

Program Evaluation, Measurement & Verification Plan

- EM&V plan will be developed in consultation with SVCE's consultant ADM

Third-Party Support

- SVCE will seek third party consultant support for this effort, including to support the feasibility assessment, develop the model policies, organize and manage stakeholder meetings in the



development and adoption process, and be a technical resource for our Member Agencies and SVCE staff/Board.

Resources

- Estimated to require \$400,000, which includes funds for consultant support and prospective Member Agency incentives. This estimate is commensurate to the budget required for the initial reach code effort.
- The above figure does not include additional resources that may be provided by other potential project partners for deliverables benefiting multiple CCA member jurisdictions. Staff will continue to leverage regional partnerships where feasible.

Staff Support

- 0.3 FTE in FY22-FY23

Timeline

- 2022 – Feasibility assessment of local policy options, identification of regional partners, issue RFP for consultant support, and begin to engage Member Agency staff and other stakeholders
- 2023 – Regional stakeholder engagement for model code development, support Member Agency staff bringing reach codes through their review process, implementation support

Program Sector & Activity Type

Sector(s)

Activity Type(s)



Leverage



Partnerships

Leverages partnership with Member Agencies; will seek partnerships with regional agencies like BAAQMD and peer community energy programs



Innovation

Leverages the SVCE-Member Agency partnership model that was constructed and demonstrated through the reach code effort and applies it to a different local policy opportunity.



Data

Data collection and analysis will be carried out in the feasibility assessment, to inform identification of preferred model policy approaches

Prioritization Criteria



Customer &
Community Value

All-electric buildings provide health, safety, environmental, and economic benefits compared to their fossil fuel counterparts.



Emissions
Impact

Electrifying buildings are critical to meeting our greenhouse gas emission targets and addressing the climate crisis.



Scalable and
Transferable

The model policies developed through this initiative will be relevant for all Member Agencies, and could be leveraged by local governments outside of SVCE service territory. Member Agencies who adopt these policies may encourage other Member Agencies to do the same.



Equity in
Service

Electrifying buildings improves health and safety, which are typically more impactful to disadvantaged communities.



Core Role
for SVCE

Aligns well with SVCE's role as regional convener and facilitator of improvements within and between our member agencies.



SVCE Program Brief – FutureFit Homes & Buildings

November 13, 2020

Summary

Provide comprehensive assistance to SVCE customers in navigating and accessing the many existing and forthcoming, non-SVCE led energy programs providing financial assistance for building decarbonization and energy efficiency, including HVAC, water heating, and cooking. Identify and address incentive gaps and layering opportunities as well as participation barriers, providing precise and targeted additional financial resources, where needed. Prioritization will be on low-income residents, affordable housing providers, and small businesses, as well as customers with high-heat vulnerabilities. SVCE’s FutureFit Heat Pump Water Heater Program will be integrated into this broader program going forward.

Key Challenges

- Limited supply available locally, limited contractor experience, potentially higher retrofit cost based on common home designs, lack of customer awareness, lack of clearly quantified economic and non-economic benefits, no clear leaders in proactive sales in water heater market

Goals

- Provide comprehensive assistance to customers in navigating external incentive programs to decarbonize their homes and buildings to maximize incentives from non-SVCE programs leveraged by our communities
- Identify participation barriers and/or incentive gaps for prioritized customer groups that SVCE can address with targeted assistance
- Expand program offering to incorporate climate adaptation and resilience benefits by incorporating measures to address high-heat vulnerabilities (e.g. heat pump cooling incentives)

Program Approach

General

- Carry out a comprehensive assessment of existing incentive programs that support decarbonization offered by third parties, including eligibility criteria, other participation requirements, and incentive levels. Identify gaps in incentives and participation barriers, by customer segment and end use. With stakeholder input, develop and enact strategies to address gaps and barriers.

Target Participants

- Existing homes and buildings in SVCE service territory that utilizing natural gas appliances
- Prioritization for low income and disadvantaged community members, affordable housing providers, other vulnerable or underrepresented groups, and small businesses

Participation Criteria

- Full participation criteria will be determined in the detailed program design phase

Program Evaluation, Measurement & Verification Plan

- An evaluation plan will be developed with ADM, SVCE’s EM&V consultant



Third-Party Support

- Issue RFP or engage SMUD for program administration support to deliver the comprehensive FutureFit Homes & Buildings program
- Outreach support may be coordinated with community partners

Resources

- Estimated at \$1M per year for FY21-23

Staff Support

- 0.25 FTE in FY21-FY23

Timeline

- 2021 – Program design, development & delivery
- 2022-2023 – Ongoing program delivery, maintenance and support

Program Sector & Activity Type

Sector(s)

Activity Type(s)



Leverage



Partnerships

Prioritizes leveraging available incentives from partners, such as BAAQMD, CEC, CPUC, PG&E and BayREN.



Innovation

Expanding program offering to include measures that provide both climate change mitigation as well as resilience benefits to community members (e.g. heat pump cooling) is a novel approach.



Data

Data analysis of customer load shapes and bill impacts will be used to determine participants that will benefit most from program participation.



Prioritization Criteria



Customer &
Community Value

All-electric buildings can provide health, safety and economic benefits to their occupants.



Emissions
Impact

Buildings account for approximately a quarter of community-wide emissions. This program incentivizes building electrification, which is necessary to address the climate crisis.



Scalable and
Transferable

Incentives alone will be inadequate to achieve the large-scale transformation necessary to meet our climate targets. Nevertheless, leveraging and providing incentives at this early stage in market development provides a key opportunity to support early adopters and learn more information about the technology, market and economic barriers that can be addressed through other interventions.



Equity in
Service

This program will prioritize and design for participation by traditionally under-represented groups, including low income, disadvantaged communities, affordable housing providers, those with high-heat vulnerabilities, and small businesses.



Core Role
for SVCE

Leveraging external incentives and identifying layering opportunities will be achieved through SVCE's role regional coordination.



SVCE Program Brief – Accessible Financing

November 13, 2020

Summary

Assess feasibility of financing mechanisms to unlock equitable financing for energy efficiency and electrification across the region, particularly for low-income communities. Potential strategies to be evaluated include tariffed or more standard on-bill financing, electrification-as-a-service business models, or other opportunities to help overcome financial barriers (first costs, access to credit etc).

Key Challenges

- A large-scale capital injection is needed to transition buildings from mixed fuel to all-electric to meet climate targets
- Multiple financial/economic barriers limit participation in building decarbonization for significant segments of our communities (high up-front costs, access to credit, split incentives, ongoing operating costs, etc.)

Goals

- Expand access to and participation in building decarbonization, targeting under-served members of our communities, by providing or facilitating the development of accessible financing products

Program Approach

General

- First, carry out general program research, including identify key financial/economic barriers to building decarbonization by customer/market segment; compile and assess the suite of potential interventions; and validate/assess customer demand for one or more key solution types.
- Engage Building Decarb Coalition, PG&E, peer CCAs and other regional stakeholders to identify a coalition of partners interested in furthering the development of one or more solutions. Develop a conceptual proposal that outlines a framework for a partnership, and how responsibilities and risks are managed and distributed across different entities.
- With this groundwork complete, lead/support comprehensive program design, development and delivery.
- Consider engaging in the CPUC proceeding on accessible financing.

Target Participants

- Low-income, renters, and other traditionally under-served members of the community

Participation Criteria

- Eligibility criteria to be determined in the development of the program.

Program Evaluation, Measurement & Verification Plan

- An evaluation plan will be developed with SVCE's EM&V consultant ADM during program development.



Third-Party Support

- Staff will seek third-party support for this program.

Resources

- Estimated at \$200k for initial work to establish a program.

Staff Support

- 0.3 FTE in 2022

Timeline

- 2022 – Program design, development & delivery
- 2023 – Ongoing program delivery, maintenance and support

Program Sector & Activity Type

Sector(s)

Activity Type(s)



Leverage



Partnerships

Staff will seek partnerships with other entities (e.g. Building Decarb Coalition, PG&E, BAAQMD, peer CCAs, etc.) for the development of the program to maximize potential impact.



Innovation

Considers a variety of creative and innovative approaches to addressing barriers to participation, including electrification-as-a-service business models



Data

Data analysis will be used to help identify viable solutions and customer segments with the greatest potential benefit.



Prioritization Criteria



**Customer &
Community Value**

Ensuring an equitable transition toward a decarbonized economy will provide significant value across customer segments and diverse communities



**Emissions
Impact**

Accessible financing for electrification will accelerate building decarbonization across multiple customer segments



**Scalable and
Transferable**

Approach will prioritize coordination and collaboration with regional partners, to ensure maximally impactful program design that will be scalable beyond SVCE borders



**Equity in
Service**

Program focuses on traditionally under-served groups that face significant barriers to participating in building decarbonization



**Core Role
for SVCE**

SVCE well-positioned to develop and/or facilitate accessible financing options relevant across the service territory



SVCE Program Brief – Regional Coordination

November 13, 2020

Summary

SVCE will initiate regular regional stakeholders convenings to coordinate program alignment; streamline access to incentive funds; identify strategies to lower costs; inform the development of the positive messaging campaign and general building decarbonization communication needs; leverage other collective activities around building decarb; and reveal and address barriers to workforce development. Regional coordination will be used to build off existing and forthcoming programs such as TECH and BUILD to develop additional programs to support workforce development. Stakeholders include Member Agencies, local community groups, architects, designers, contractors, labor, affordable housing providers, business community, BAAQMD, BayREN, other CCAs, PG&E, healthcare agencies, educational institutions, and non-governmental organizations.

Key Challenges

- Insufficient information-sharing and coordination amongst relevant stakeholders inhibits rapid market transformation

Goals

- Provide a venue for information-sharing, regional coordination and surfacing and prioritizing barriers and opportunities
- Co-develop a regional vision for effectively accelerating building decarbonization to achieve climate targets
- Facilitate bringing in external funding to advance building decarbonization in our communities

Program Approach

General

- Convene stakeholders on a regular basis to provide an appropriate forum for regional coordination.

Target Participants

- SVCE will solicit representative participation from a variety of stakeholder groups to ensure the regional forum is effective in guiding and informing SVCE and other stakeholder efforts

Participation Criteria

- N/A

Program Evaluation, Measurement & Verification Plan

- An evaluation plan may be developed with ADM, SVCE's EM&V consultant

Third-Party Support

- Staff may solicit third-party support for organizing and convening the regular meetings, and for grant writing if there are relevant external funding opportunities

Resources



- Initial estimate of \$50k per year for FY21-23

Staff Support

- 0.05 FTE

Timeline

- 2021 launch, then quarterly or semi-annual meetings, depending on need

Program Sector & Activity Type

Sector(s)

Activity Type(s)



Leverage



Partnerships

Regional coordination will help build relationships and partnerships across different regional stakeholders.



Innovation

The forum will be used to engage new entities that may have aligned interests, such as the healthcare industry and their interest in building electrification given the health and safety benefits.



Data

Forum will be used to share data and latest relevant building decarbonization analyses to support data-based decision-making.

Prioritization Criteria



**Customer &
Community Value**

Customer and community representatives will be invited to participate in the regional forum, to ensure action is aligned with delivering value.



**Emissions
Impact**

Buildings account for approximately a quarter of community-wide emissions. Enhanced stakeholder coordination will support market transformation to accelerate building decarbonization across the region.



**Scalable and
Transferable**

Regional coordination will facilitate knowledge transfer and accelerate action across the region.



**Equity in
Service**

Stakeholders will include representatives from under-served groups (low income, disadvantaged communities, affordable housing providers, etc.).



**Core Role
for SVCE**

SVCE is well-positioned to support regional coordination across the service territory.



Staff Report – Item 4

Item 4: Adopt Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule to Add Senior Government Affairs Manager Position

From: Girish Balachandran, CEO

Prepared by: Melicia Charles, Director of Regulatory and Legislative Policy

Date: 11/13/2020

RECOMMENDATION

Staff recommends that the Board approve Resolution 2020-34 amending the Silicon Valley Clean Energy ("SVCE") positions chart, job classifications and salary schedule to add the Senior Government Affairs Manager position.

EXECUTIVE COMMITTEE RECOMMENDATION

The Executive Committee met October 23, 2020 and supported the addition of the Senior Government Affairs Manager position.

BACKGROUND

The Board adopted SVCE's 2020-2021 Strategic Plan ("Strategic Plan" or "Plan") and five strategic focus areas at the October 14, 2020 Board meeting. During multiple Board meetings leading to the adoption of the fiscal year 2020-21 budget and the adoption of the updated Strategic Plan, the addition of a new position related to expanded community engagement via a government affairs focus was suggested, discussed, and supported. The CEO and interim CFO, while presenting the budget in August and September, indicated that the job description for the position was being developed and would be presented for approval shortly.

ANALYSIS & DISCUSSION

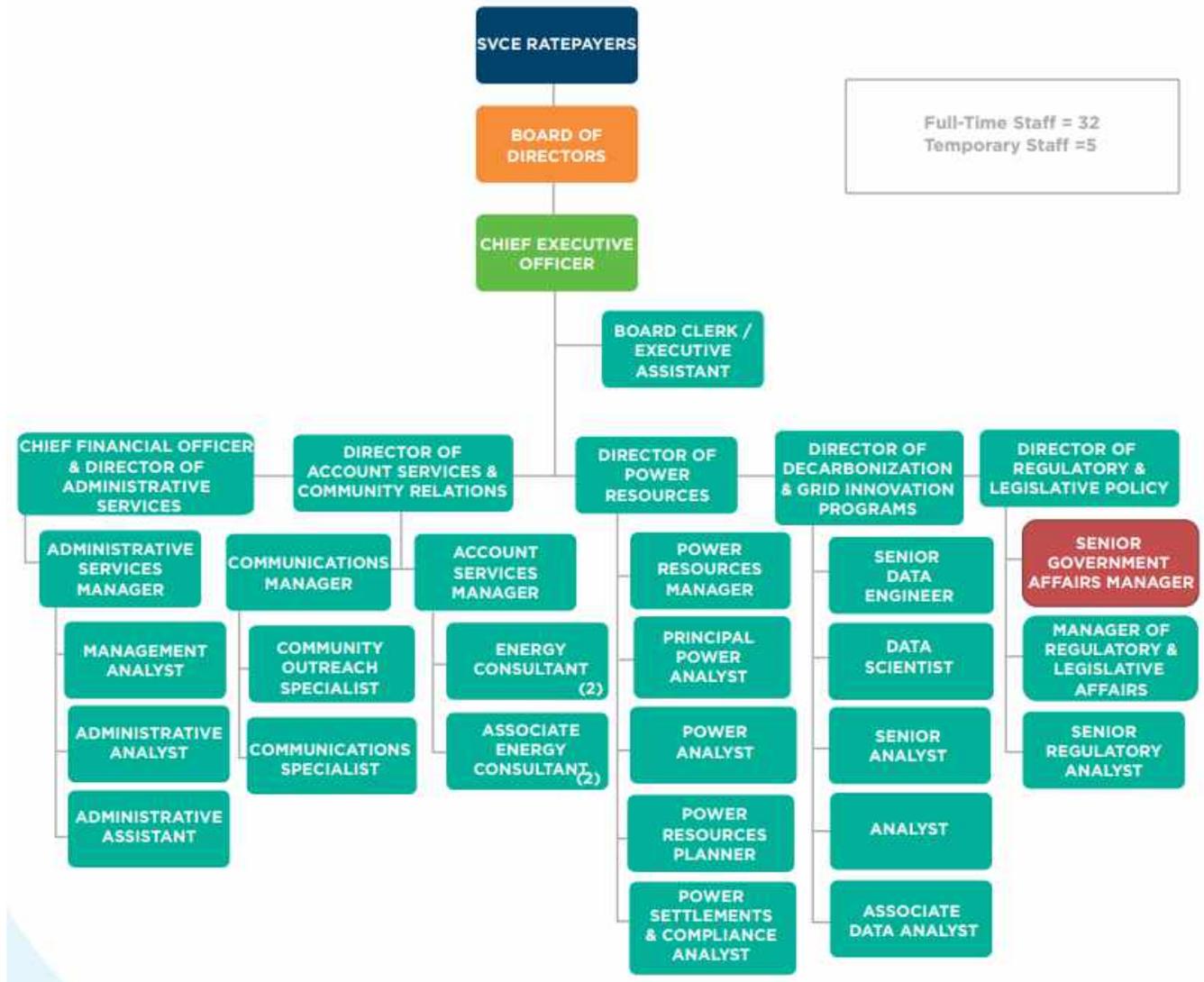
The Plan adopted nineteen goals, including: engaging a full range of public, private and non-profit stakeholders to leverage our decarbonization efforts; engaging regulators, legislators and local electeds in developing policies that protect CCA customer investments and further decarbonization, grid reliability, affordability and social equity; and influencing policy makers by building and leveraging local electeds, diverse stakeholders and regional agencies.

The Senior Government Affairs Manager will strengthen our ability to meet these goals and the overall mission of SVCE. The individual in this position will focus on relationship development and management with local, regional and state elected officials and their staff, as well as coalition-building with businesses, agencies and organizations that share similar goals.

If approved by the Board, the following is the timeline for implementation

- Advertise and Recruit –December/January 2021
- Shortlist –January 2021
- Interview –January/February 2021
- Onboarding –February/March 2021

The recommended change will change the headcount approved by the Board of Directors in the current fiscal year budget. The following organizational chart is the Recommended Table of Organization for the remainder of FY 2020-21 (new position highlighted in maroon):



STRATEGIC PLAN

This recommendation supports the following Strategic Focus Area and Strategic Plan Goals:

- Community Engagement and Outreach (Strategic Plan Focus Area)
- Goal #11: Engage a full range of public, private, and non-profit stakeholders to leverage our decarbonization efforts
- Goal #15: Engage regulators, legislators and local electeds in developing policies that support CCAs
- Goal #17: Influence policy makers by building and leveraging local electeds, diverse stakeholders, and regional agencies

ALTERNATIVE

Staff is open to suggestions from the Board.

FISCAL IMPACT

The importance of adding a Senior Government Affairs Manager to deepen our government relations efforts, particularly with local member agencies, was brought forward and addressed during the budget process for FY 2020-21 that occurred in August and September of this year. The fiscal impact of adding this position will range between \$148,865 and \$204,276 depending on where in the salary range the person selected begins.

ATTACHMENTS

1. Draft Job Description for the Senior Government Affairs Manager position
2. Resolution 2020-34 Amending the Approved Positions Chart, Job Classifications and Salary Schedule to Add the Position of Senior Government Affairs Manager



JOB DESCRIPTION

SENIOR GOVERNMENT AFFAIRS MANAGER

SALARY RANGE: \$148,865 – \$204,276

SUMMARY DESCRIPTION

The Senior Government Affairs Manager (“Manager”) works under general direction from the Director of Legislative and Regulatory Policy and has responsibility for a wide range of Silicon Valley Clean Energy (SVCE) policy activities, with particular emphasis building relationships and on representation of SVCE’s interests at the state legislature and at the local level. The Manager will regularly interface and collaborate with state and local elected officials, including but not limited to, SVCE’s Board of Directors, help build coalitions with like-minded stakeholders, evaluate proposed policies to assess the impact on SVCE, develop and communicate SVCE positions on issues to various stakeholders, develop position papers and presentation materials to support SVCE’s position. The Manager will be assigned to assist in the work of other SVCE teams. This position performs related work and other tasks for SVCE as required.

The Manager works independently to perform assignments under the general direction of the Director of Legislative and Regulatory Policy. The Manager participates as an SVCE representative before various agencies on matters affecting community choice aggregators (CCAs) and other electric utilities, including in public meetings, hearings and similar forums. The Manager is tasked with reviewing and drafting briefs; preparation of testimony, and hearing exhibits.

SUPERVISION RECEIVED AND EXERCISED

This position reports directly to the Director of Legislative and Regulatory Policy and may have oversight responsibility for external contractors depending on the project.

ESSENTIAL FUNCTIONS

- Develop high-level policy and responses for key legislative and local issues affecting SVCE, including strategy and prioritization of legislative and local policies for Director of Legislative and Regulatory Policy, Director of Account Services and Community Relations and CEO consideration.
- Represent SVCE in public meetings and hearings.
- Collaborate and partner with state, regional and local elected officials on policies that are aligned with SVCE’s goals.
- Collaborate and partner with organizations on policies and initiatives that are aligned with SVCE’s goals.
- Track, review, analyze and summarize legislation and/or local initiatives prepared by utilities and other entities that could impact SVCE and its customers.
- Track, analyze and interpret legislative proposals and other local policy issues with an eye toward impact on and response from SVCE.
- Under direction of the Director of Legislative and Regulatory Policy, work closely with

technical experts and external regulatory counsel to develop effective and persuasive communications before the Governor's Office, state legislature and local elected officials.

KNOWLEDGE, SKILLS, AND ABILITIES

Knowledge of:

- California state energy policy issues.
- California legislative process and protocols
- Experience working with or advocating to elected officials at the local, state or federal level.
- Microsoft Office Suite including Excel, Word, Adobe Acrobat, and PowerPoint.
- Communications portals and web-based resources for regulatory and legislative activity
- Depending upon the assignment, principles and practices in the areas of energy efficiency, distributed energy resources and energy procurement, or other to be determined areas.

Ability to:

- Manage multiple priorities and quickly adapt to changing priorities in a dynamic environment.
- Take responsibility and work independently, as well as coordinate team efforts within SVCE and the greater CCA community.
- Superior writing skills, especially related to briefings, legislation, and related regulatory and legislative correspondence.
- Orally communicate complex topics in easy to understand presentations before the Board, staff and external audiences
- Be thorough and detail-oriented.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy at all times.

REQUIRED QUALIFICATIONS

Experience and Training Guidelines: *Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

EDUCATION. A Bachelor's Degree from an accredited university or college in economics, business administration, environmental science, public policy or a related field. A Master's Degree in economics, business administration, environmental science, public policy or a related field can substitute for up to one year of the required experience

EXPERIENCE. At least five (5) years of progressively responsible experience in legislative and/or governmental affairs at an electric utility, regulatory agency, or legislative office with emphasis on electric procurement issues, energy efficiency, energy market structure, or a closely related field.

LICENSE. Possession of a valid Class C California driver's license and a satisfactory driving record at the time of hire.

PHYSICAL AND WORKING CONDITIONS

The physical and mental demands described here are representative of those that must Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

ENVIRONMENT. Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers' markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

PHYSICAL. While performing the duties of this class, employees are regularly required to sit, walk, and stand; talk or hear, in person and by telephone; reach with hands and arms,. Employees are occasionally required to walk, and stand for prolonged periods; stoop, bend, kneel and twist; and may lift up to 20 pounds. Employees must be able to communicate in person, in writing, and by telephone with Board members, management, co-workers, vendors, consultants, and with the public in face-to-face, one-to-one, and group settings.

VISION. See in the normal visual range with or without correction; vision sufficient to read computer screens and printed documents; and, operate assigned equipment.

HEARING. Hear in the normal audio range with or without correction.

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----

RESOLUTION NO. 2020-34

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE APPROVED POSITIONS CHART, JOB CLASSIFICATIONS AND SALARY SCHEDULE TO ADD THE POSITION OF SENIOR GOVERNMENT AFFAIRS MANAGER

WHEREAS, the Silicon Valley Clean Energy Authority (“Authority”) was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, under Section 2.5.2 of the Joint Powers Agreement creating the Authority, the Authority has the power to employ agents and employees; and

WHEREAS, the Board of Directors adopted Resolution No. 2016-06 on August 10, 2016 establishing an Organization Chart for the Authority and salary ranges for the established positions; and

WHEREAS, the Board of Directors has amended the Organization Chart and Salary Schedule to add and delete positions and update salaries with the adoption of Resolution Nos. 2017-07, 2017-10, 2018-06, 2018-10, 2019-04, 2019-15, 2020-09, 2020-15, 2020-20 and 2020-26; and

WHEREAS, Resolution No. 2019-04 also renamed the Organization Chart as the Positions Chart; and

WHEREAS, to meet the needs of the Authority, the Chief Executive Officer recommends that the Board amend the existing schedule of job classification titles and salary ranges to add the position of Senior Government Affairs Manager.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The Authority’s schedule of job classification titles and salary ranges is amended to add the position of Senior Government Affairs Manager. The following schedule of job classification titles and salary ranges shall replace and supersede the schedule shown in Resolution 2020-26:

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Account Services Manager	111,648	175,447
Administrative Services Manager	120,952	190,067
Administrative Analyst	83,737	143,428
Administrative Assistant	55,824	88,601
Analyst	83,737	131,585
Associate Analyst	69,780	109,654
Associate Data Analyst	82,684	122,559

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Associate Energy Consultant	69,780	109,654
Associate Power Analyst	82,684	122,559
Associate Legislative Analyst	72,106	113,310
Board Clerk / Executive Assistant	102,344	165,651
Chief Financial Officer and Director of Administrative Services	148,865	259,662
Communications Manager	111,648	175,447
Communications Specialist	60,476	98,835
Community Outreach Specialist	60,476	98,835
Data Analyst	96,641	144,489
Data Scientist	110,597	158,446
Director of Account Services and Community Relations	148,865	233,929
Director of Decarbonization and Grid Innovation Programs	132,056	233,929
Director of Power Resources	176,776	277,791
Director of Regulatory and Legislative Policy	148,865	233,929
Energy Consultant	83,737	131,585
Management Analyst	102,344	160,827
Manager of Decarbonization and Grid Innovation Programs	120,952	190,067
Manager of Regulatory & Legislative Affairs	124,552	188,351
Power Analyst	96,641	144,489
Power Resources Manager	139,561	219,309
Power Resources Planner	120,952	190,067
Power Settlements & Compliance Analyst	102,344	160,827
Principal Power Analyst	120,952	190,067
Rates Manager	120,952	190,067
Senior Analyst	97,692	145,542
Senior Communications Specialist	72,956	110,835
Senior Community Outreach Specialist	72,956	110,835
Senior Data Analyst	110,597	158,446
Senior Data Engineer	122,597	170,446
Senior Energy Consultant	97,692	145,542
Senior Government Affairs Manager	148,865	204,276
Senior Power Analyst	110,597	158,446
Senior Rates Analyst	110,172	165,996
Senior Regulatory Analyst	97,692	153,516

Section 2. The organization of positions shall be as shown in Attachment 1: SVCE Approved Positions Chart. This new Approved Positions Chart shall replace and supersede the Approved Positions Chart adopted by Resolution 2020-26.

Section 3. The Chief Executive Officer shall create and maintain as needed job descriptions for each classification.

Section 4. The Chief Executive Officer is authorized to initiate recruitments and hire for all listed positions.

ADOPTED AND APPROVED this 13th day of November, 2020 by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

Chair

ATTEST:

Clerk

Attachment 1: SVCE Approved Positions Chart

SVCE Positions Chart

Chief Executive Officer
Board Clerk/Executive Assistant
Chief Financial Officer and Director of Administrative Services
Rates Manager
Senior Rates Analyst
Administrative Services Manager
Management Analyst
Administrative Analyst
Administrative Assistant
Director of Account Services & Community Relations
Account Services Manager
Senior Energy Consultant
Energy Consultant
Associate Energy Consultant
Communications Manager
Senior Communications Specialist
Senior Community Outreach Specialist
Community Outreach Specialist
Communications Specialist
Director of Power Resources
Power Resources Manager
Principal Power Analyst
Senior Power Analyst
Power Analyst
Associate Power Analyst
Power Resources Planner
Power Settlements & Compliance Analyst
Director of Decarbonization & Grid Innovation Programs
Manager of Decarbonization & Grid Innovation Programs
Senior Data Engineer
Data Scientist
Senior Analyst
Analyst
Associate Analyst
Senior Data Analyst
Data Analyst
Associate Data Analyst
Director of Regulatory & Legislative Policy
Senior Government Affairs Manager
Manager of Regulatory & Legislative Affairs
Senior Regulatory Analyst
Associate Regulatory Analyst

*This approved list of Job Titles has more positions than the number of FTEs funded by the Board via the Budget, to provide flexibility to hire at the right level and also provide advancement opportunities



Staff Report – Item 5

Item 5: Super Joint Powers Authority Information

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/13/2020

This item will be addressed in the form of an oral report and presentation to the Board of Directors.



Silicon Valley Clean Energy Board of Directors Meeting

November 13, 2020

Appendix A

Power Resource Contracts Executed by CEO

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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Purchaser" or "SVCE") and Elk Hills Power, LLC ("EHP" or "Seller") dated as of October 8, 2020 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 **TRANSACTION TERMS**

Purchaser: Silicon Valley Clean Energy Authority

Seller: EHP

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

ARTICLE 2 **DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Contract Quantity of the Product from the Shown Unit(s).
- (b) Seller will deliver the Contract Quantity of Product by submitting to CAISO in its Supply Plan the Shown Unit for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the Tariff. Seller will submit, or cause the Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Contract Quantity, less any excused deductions to the Contract Quantity in the case of Flexible RA Capacity for excused reductions in Unit EFC.
- (d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. Seller will identify the Shown Unit(s) and Contract Quantity by providing Purchaser with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

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- (f) The Product is delivered by Seller and received by Purchaser when either (i) the CIRA Tool shows the Supply Plan accepted for the Contract Quantity of Product from the Shown Unit by CAISO or (ii) Seller complies with Purchaser's written instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or, (ii) Seller fails to submit the volume of Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Purchaser will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Purchaser's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹
- (h) Excused Reductions in Unit EFC: Unless the Parties have designated this Section 2.1(h) as "Not applicable", if the Product includes FCR Attributes, then Seller's failure to deliver any of the Contract Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Effective Date as determined by CAISO and Seller has provided notice of such reduction to Purchaser by the Notification Deadline for the applicable Showing Month. The extent to which Seller's failure is excused will equal (i) the Contract Quantity of FCR Attributes for such day multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Effective Date, divided by (iii) the Unit EFC as of the Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller may, but is not obligated to, provide the applicable part of the Contract Quantity of FCR Attributes for such day from the Shown Unit.

2.2 Purchaser's Remedies for Seller's Failure to Deliver Contract Quantity

In addition to Purchaser's rights under Section 21.3, Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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2.3 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Contract Quantity of Product; provided that any such re-sale must not increase or modify Seller's obligations hereunder other than as set forth in this Section 2.3(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Purchaser pursuant to this Confirmation for re-sale in such market, and Seller and the Unit's Scheduling Coordinator shall comply with Purchaser's direction to the extent Seller is not required to incur any additional costs to qualify such Contract Quantity of Product for participation in such centralized capacity market or follow such direction from Purchaser. Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3
PAYMENTS

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

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3.2 Allocation of Other Payments and Costs

- (a) Product does not confer to Purchaser any right to dispatch or receive the energy or ancillary services from a Shown Unit. Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Nothing herein will prevent Seller from exercising any rights under the Tariff with respect to use of RA Substitute Capacity during the Delivery Period. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit's SC, owner, or operator for noncompliance.

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

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Purchaser's rights to the Contract Quantity of Product for the sole benefit of Purchaser or any Subsequent Purchaser. If necessary, the Parties

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further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

- (a) no part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) the Unit qualifies under the Tariff for the Product, and the Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit during the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;
- (d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Collateral Requirements

- (a) Notwithstanding anything to the contrary contained in the WSPP Agreement, neither Purchaser nor Seller shall be required to provide Performance Assurance to the other Party during the Delivery Period.
- (b) Sections 22.1(d) of the WSPP Agreement shall not apply to either Party with respect to this Transaction.

ARTICLE 5

ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination

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Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement, (i) Purchaser may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser. Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.)

5.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Joint Powers Authority

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (California Government Code Sections 6500 et seq.) and is a public entity separate and distinct from its members. Purchaser shall solely be responsible for all of such Party's debts, obligations and liabilities accruing and arising out of this Confirmation. Seller shall have no rights and shall not make any claim, take any actions or assert any remedies against any of the Purchaser's members, any cities or counties participating in Purchaser's community choice aggregation program, or any of Purchaser's retail customers in connection with this Confirmation.

5.5 Additional WSPP Agreement Amendments

For purposes of this Transaction only, the WSPP Agreement shall be amended as follows:

- (a) Section 4 of the WSPP Agreement is amended by:
 - 1. Adding "or the Friday after the United States Thanksgiving holiday" before the period at the end of the first sentence under the definition of "Business Day(s)".
 - 2. Adding the following new definitions:

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“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.”

- (b) The first sentence of the second paragraph of Section 10 of the WSPP Agreement is amended by deleting the “or” before “(ii)” and adding to the end of such sentence “or (iii) if the Party claiming inability to perform is a Governmental Entity or Public Power System, any action taken by the Governmental Entity or Public Power System in its governmental capacity.”
- (c) Section 13.1 of the WSPP Agreement is amended to change “FERC” to “FERC or the CPUC”.
- (d) Section 21.2 of the WSPP Agreement is deleted and replaced with the following:

“Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to seek payment of such monies in court in accordance with Section 34.1 and (ii) shall possess the right to seek relief directly from such court without first exercising termination and liquidation rights under Section 22.

In addition, each Party shall possess the right to seek specific performance (injunctive relief) of the non-delivery related terms of this Agreement and any Confirmation in court in accordance with Section 34.1. In seeking to enforce the terms of this Agreement, however, consistent with Section 21.1, no Party is entitled to receive or recover monetary damages except as provided in Sections 21.3 and 22.”
- (e) Section 21.3(d) of the WSPP Agreement is modified by replacing the words “After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement” with “Unless otherwise resolved informally, any dispute involving the calculation of the damages shall be resolved in accordance with Section 34 of this Agreement”.
- (f) Section 21 of the WSPP Agreement is modified by adding the following Section 21.4:

“No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (provided such court is consistent with the venue provisions in Section 31.4), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.”
- (g) Section 22.3(c) of the WSPP Agreement is amended by deleting the third sentence thereof and replacing it with the following:

“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination

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Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

- (h) Section 22.3(e) of the WSPP Agreement is modified by deleting the entire provision (including subsections) and replacing it with the following: “[Intentionally omitted]”
- (i) Section 22.3(e)(i) of the WSPP Agreement is modified by replacing the words “Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful” with “Unless otherwise resolved informally, any disputes as to the methodology shall be resolved in accordance with Section 34 of the WSPP Agreement”.
- (j) Section 22.3(f) of the WSPP Agreement is modified by deleting the entire provision and replacing it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then such dispute will be resolved in accordance with Section 34 of the WSPP Agreement.”
- (k) Section 24 of the WSPP Agreement is deleted in its entirety and replaced with the following:

“This Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.”
- (l) Subsections 34.1 through 34.4 of the WSPP Agreement are deleted and replaced with the following:

“34.1 Consent to Jurisdiction. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, COUNTY AND CITY OF SAN FRANCISCO. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

34.2 Reserved.

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34.3 Reserved.

34.4 Reserved"

- (m) Subsections 34.5 and 34.6 are hereby added to Section 34 of the WSPP Agreement:

"34.5 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.

34.6 LIMITATION OF DAMAGES. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT AND ANY CONFIRMATION SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT OR ANY CONFIRMATION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A CONFIRMATION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS."

- (n) Section 35 of the WSPP Agreement is modified by inserting the following paragraph between the first and second sentences: "The Parties agree that each Party's business consists in whole or in part of entering into forward contracts as or with merchants in capacity or energy, which is presently the subject of dealing in the forward contract trade. The Parties further agree that the transactions entered into pursuant to any Confirmations hereunder (as provided in Article 32 of the WSPP Agreement) are forward contracts involving the sale of capacity and/or energy, which are presently the subject of dealing in the forward contract trade. No Party shall assert before any court or other governmental authority either that another Party is not, or shall not be treated as, a forward contract

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merchant or that the transaction entered into pursuant, to any Confirmations hereunder (as provided in Article 32 of the WSPP Agreement) are not, or shall not be treated as, forward contracts under the United States Bankruptcy Code.”

- (o) The following phrase is inserted at the beginning of Section 37 of the WSPP Agreement: “On the date of entering into this Confirmation and throughout the Delivery Period,”
- (p) Section 37 of the WSPP Agreement is further modified by adding the following new paragraph at the end:

“Seller represents and warrants that it (and in the case of Party B, if Party B is a cooperative, each member) is not:

- (i) a federal agency;
- (ii) a state, state agency, city, county, municipality, or other political subdivision of a state;
- (iii) an employee benefit plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974;
- (iv) a governmental plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974;
- (v) an endowment, including an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;
- (vi) or a “special entity” as defined in Section 4s(h)(2)(C) of the U.S. Commodity Exchange Act and 17 C.F.R. § 23.401(c).”

“Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Agreement, with respect to this Agreement and each Confirmation, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Agreement and each Confirmation, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures, has or will be taken and performed as required under Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.) (the “Act”) and the Governmental Entity or Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Agreement by Governmental Entity or Public Power System are for a proper public purpose (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) prior to the commencement of each fiscal year, which fiscal year ends June 30, the Governmental Entity or Public Power System shall have obtained all necessary budgetary approval to perform all of its obligations to make payments hereunder for such fiscal year, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues

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of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.”

- (q) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Mobile Sierra” Section shall be inserted as Section 41:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) To the fullest extent permitted by Applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in Applicable Law or market conditions that may occur. In the event it were to be determined that Applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (ii) shall not apply, provided that, consistent with the foregoing subsection (i), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (i).”
- (r) Exhibit D of the WSPP Agreement is deleted and replaced with:

“Exhibit D - RESERVED”.

5.6 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.7 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only

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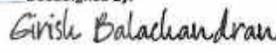
through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

AGREED AS OF THE EFFECTIVE DATE:

ELK HILLS POWER, LLC

By: 
Name: 
Title: 

**SILICON VALLEY CLEAN ENERGY
AUTHORITY**

DocuSigned by:

By: 5CA64B9AC4C24C3
Name: Girish Balachandran
Title: CEO

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APPENDIX A
DEFINED TERMS

“CAISO” means the California ISO and any successor entity.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

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

“FCR Attributes” means, with respect to a Unit, any and all resource adequacy attributes of the Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

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

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

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

“MW” means megawatt.

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“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Product” means RAR, Local RAR and FCR that is specified and marked applicable in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

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

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

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

“Unit” means the generation unit described in Appendix B and any other generating unit that is capable of supply the Contract Quantity of Product during the Delivery Period.

“Unit EFC” means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means Unit Net Qualifying Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

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**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

System RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: North

Resource Category (MCC Bucket): 4 (All Hours – planned availability is unrestricted)

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): N/A

Delivery Period: [REDACTED]

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mon)
[REDACTED]		

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Unit 1

Unit Specific Information

Resource Name	Elk Hills Power
Physical Location	4026 Skyline Road, Tupman, CA
CAISO Resource ID	ELKHIL_2_PL1X3
SCID of Resource	EMM2
Unit NQC by month (e.g., Jan=50, Feb=65):	380 MWs
Unit EFC by month (e.g., Jan=30, Feb=50)	171 MWs
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas Fired
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	_____
Prorated Percentage of Unit Flexible Factor	_____
Capacity Area (CAISO System, Fresno, Sierra, , Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO North System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4 (All Hours – planned availability is unrestricted)

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APPENDIX C
NOTICE INFORMATION

Seller: Elk Hills Power, LLC	Purchaser: Silicon Valley Clean Energy Authority
All Notices: 4026 Skyline Rd P.O. Box 460 Tupman, CA 93276 Attn: Tony Ziobro E-mail: Anthony.Ziobro@crc.com Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	All Notices: 333 West El Camino Real, Suite 290 Sunnyvale, CA 94087 Attn: Girish Balachandran, CEO Phone: 408-721-5301 Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Tony Ziobro Phone: 661-763-2726 E-mail: Anthony.Ziobro@crc.com	Invoices: Attn: SVCE Power Settlements Phone: 408-721-5301 E-mail: SVCEpowersettlements@svcleanenergy.org
Scheduling: Boston Energy Trading & Marketing, LLC Attn: Tom Green Phone: 617-912-5932 E-mail: Tom.Green@betm.com	Scheduling: Attn: ZGlobal Phone: (916) 221-4327 E-mail: eric@zglobal.biz
Wire Transfer: BNK: JPMorgan Chase [REDACTED] [REDACTED]	Wire Transfer: BNK: River City Bank [REDACTED] [REDACTED]
Credit and Collections: CRC Marketing, Inc. Attn: Credit Manager E-mail: Credit@crc.com	Credit and Collections: Attn: SVCE Power Settlements Phone: 408-721-5301 E-mail: SVCEpowersettlements@svcleanenergy.org
Defaults: CRC Marketing, Inc. Attn: Legal E-mail: Ulrik.Damborg@crc.com	Defaults: Notices of an Event of Default or Potential Event of Default to: Attn: Girish Balachandran, CEO Phone: 408-721-5301 With an additional copy to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 E-mail: steve@hallenergylaw.com

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter (“Confirmation”) confirms the Transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership (“Buyer”), and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Seller”), each individually a “Party” and together the “Parties”, dated as of August 6, 2020 (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of August 7, 2017, along with any annexes and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** “Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.2** “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.5** “Availability Standards” shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.7** “CAISO” means the California Independent System Operator or its successor.
- 1.8** “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.9** “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.10** “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.
- 1.11** “Contingent Firm RA Product” has the meaning specified in Section 3.4 hereof.

- 1.12** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.13** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).
- 1.14** “Control Area” has the meaning set forth in the Tariff.
- 1.15** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.16** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.17** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.18** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.19** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.20** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.21** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.22** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.23** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.24** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.25** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.26** “GADS” means the Generating Availability Data System or its successor.

- 1.27** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.28** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.29** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.30** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.31** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.32** “LRA” has the meaning set forth in the Tariff.
- 1.33** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.34** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.35** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.37** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.38** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.39** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.40** “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.41** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

- 1.42** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.43** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.44** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.45** “Product” has the meaning specified in Article 3 hereof.
- 1.46** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.47** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.48** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.49** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.50** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.51** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.52** “Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.
- 1.53** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.54** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.55** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.56** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.57** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

- 1.58** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.59** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.60** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.62** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.63** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Los Medanos Energy Center AGGREGATE

Location: Pittsburg, CA

CAISO Resource ID: LMEC_1_PL1X3

Resource Type: I_Phys_Res

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid (“Substation”): Pittsburg

Path 26 (North, South or None): North

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:
None

Run Hour Restrictions: None

LAR Attributes (Yes/No): No

If yes: Local Capacity Area (as of Confirmation Effective Date): N/A

Product Type (Flexible/Generic): Flexible

If Generic: Unit NQC (as of the Confirmation Effective Date): N/A

If Flexible: Unit EFC (as of the Confirmation Effective Date): Varies by Month

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): Base

3.

RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

**4.
DELIVERY AND PAYMENT**

4.1 Delivery Period

The Delivery Period shall be [REDACTED] inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Year/Month	Contract Quantity (MWs)

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the

applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such

Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement:

an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY PRICE TABLE

Contract Year/Month	RA Capacity Price (\$/kW-month)
[Redacted Table Content]	

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5.**CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure

of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6.

RESERVED

7.

OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8.

CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9.

BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

**10.
MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**11.
COLLATERAL REQUIREMENTS**

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

Silicon Valley Clean Energy Authority



DocuSigned by:
Girish Balachandran

By: _____

By: _____
5CA64B9AC4C24C3...

Name: Andrew Novotny

Name: Girish Balachandran

Title: Vice President

Title: CEO

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter (“Confirmation”) confirms the Transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership (“Seller”), and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of August 6, 2020 (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of August 7, 2017, along with any annexes and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** “Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.2** “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.5** “Availability Standards” shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.7** “CAISO” means the California Independent System Operator or its successor.
- 1.8** “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.9** “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.10** “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.
- 1.11** “Contingent Firm RA Product” has the meaning specified in Section 3.4 hereof.

- 1.12** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.13** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).
- 1.14** “Control Area” has the meaning set forth in the Tariff.
- 1.15** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.16** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.17** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.18** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.19** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.20** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.21** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.22** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.23** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.24** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.25** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.26** “GADS” means the Generating Availability Data System or its successor.

- 1.27** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.28** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.29** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.30** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.31** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.32** “LRA” has the meaning set forth in the Tariff.
- 1.33** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.34** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.35** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.37** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.38** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.39** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.40** “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.41** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

- 1.42** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.43** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.44** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.45** “Product” has the meaning specified in Article 3 hereof.
- 1.46** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.47** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.48** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.49** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.50** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.51** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.52** “Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.
- 1.53** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.54** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.55** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.56** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.57** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

- 1.58** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.59** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.60** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.62** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.63** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Delta Energy Center Aggregate

Location: Pittsburg, CA

CAISO Resource ID: DELTA_2_PL1X4

Resource Type: I_Phys_Res

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid (“Substation”): Pittsburg 230 kV substation

Path 26 (North, South or None): North

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:
None

Run Hour Restrictions: None

LAR Attributes (Yes/No): Yes

If yes: Local Capacity Area (as of Confirmation Effective Date): Greater Bay Area

Product Type (Flexible/Generic): Flexible

If Generic: Unit NQC (as of the Confirmation Effective Date): N/A

If Flexible: Unit EFC (as of the Confirmation Effective Date): Varies by Month

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): Base

3.

RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

**4.
DELIVERY AND PAYMENT**

4.1 Delivery Period

The Delivery Period shall be [REDACTED], inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Year/Month	Contract Quantity (MWs)
[REDACTED]	

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the

applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such

Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement:

an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY PRICE TABLE

Contract Year/Month	RA Capacity Price (\$/kW-month)
[Redacted Table Content]	

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5.**CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure

of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6.

RESERVED

7.

OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8.

CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9.

BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

**10.
MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**11.
COLLATERAL REQUIREMENTS**

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

Silicon Valley Clean Energy Authority



By: _____

Name: Andrew Novotny

Title: Vice President

DocuSigned by:
Girish Balachandran

By: _____

Name: 5CA64B9AC4C24C3
Girish Balachandran

Title: CEO

REVISED

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter (“Confirmation”) confirms the Transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership (“Buyer”), and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Seller”), each individually a “Party” and together the “Parties”, dated as of August 7, 2020 (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of August 7, 2017, along with any annexes and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** “Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.2** “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.5** “Availability Standards” shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.7** “CAISO” means the California Independent System Operator or its successor.
- 1.8** “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.9** “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.10** “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.
- 1.11** “Contingent Firm RA Product” has the meaning specified in Section 3.4 hereof.

- 1.12** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.13** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).
- 1.14** “Control Area” has the meaning set forth in the Tariff.
- 1.15** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.16** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.17** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.18** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.19** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.20** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.21** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.22** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.23** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.24** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.25** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.26** “GADS” means the Generating Availability Data System or its successor.

- 1.27** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.28** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.29** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.30** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.31** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.32** “LRA” has the meaning set forth in the Tariff.
- 1.33** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.34** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.35** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.37** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.38** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.39** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.40** “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.41** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

- 1.42** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.43** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.44** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.45** “Product” has the meaning specified in Article 3 hereof.
- 1.46** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.47** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.48** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.49** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.50** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.51** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.52** “Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.
- 1.53** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.54** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.55** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.56** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.57** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

- 1.58** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.59** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.60** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.62** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.63** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Colusa Generating Station

Location: Stonyford, CA

CAISO Resource ID: COLUSA_2_PL1X3

Resource Type: Natural Gas

Resource Category (1, 2, 3 or 4): 1

Point of interconnection with the CAISO Controlled Grid (“Substation”): Colusa

Path 26 (North, South or None): North

3.**RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

**4.
DELIVERY AND PAYMENT**

4.1 Delivery Period

The Delivery Period shall be [REDACTED], inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Year/Month	Contract Quantity (MWs)
[REDACTED]	

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with

any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such

Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement:

an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY PRICE TABLE

Contract Year/Month	RA Capacity Price (\$/kW-month)
[REDACTED]	

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5.**CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure

of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6.

RESERVED

7.

OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8.

CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9.

BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

**10.
MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**11.
COLLATERAL REQUIREMENTS**

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

Silicon Valley Clean Energy Authority



By: _____

Name: Andrew Novotny

Title: Vice President

DocuSigned by:
Girish Balachandran

By: _____

Name: Girish Balachandran

Title: CEO

REVISED

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter (“Confirmation”) confirms the Transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership (“Seller”), and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of August 6, 2020 (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of August 7, 2017, along with any annexes and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

**1.
DEFINITIONS**

- 1.1** “Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.2** “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3** “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4** “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.5** “Availability Standards” shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.7** “CAISO” means the California Independent System Operator or its successor.
- 1.8** “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.9** “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.10** “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.
- 1.11** “Contingent Firm RA Product” has the meaning specified in Section 3.4 hereof.

- 1.12** “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.13** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).
- 1.14** “Control Area” has the meaning set forth in the Tariff.
- 1.15** “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.16** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.17** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.18** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.19** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.20** “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.21** “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.22** “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.23** “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.24** “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.25** “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.26** “GADS” means the Generating Availability Data System or its successor.

- 1.27** “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.28** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.29** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.30** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.31** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.32** “LRA” has the meaning set forth in the Tariff.
- 1.33** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.34** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.35** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.37** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.38** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.39** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.40** “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.41** “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

- 1.42** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.43** “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.44** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.45** “Product” has the meaning specified in Article 3 hereof.
- 1.46** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.47** “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.48** “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.49** “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.50** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.51** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.52** “Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.
- 1.53** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.54** “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.55** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.56** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.57** “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

- 1.58** “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.59** “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.60** “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.61** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.62** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.63** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Los Medanos Energy Center AGGREGATE

Location: Pittsburg, CA

CAISO Resource ID: LMEC_1_PL1X3

Resource Type: I_Phys_Res

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid (“Substation”): Pittsburg

Path 26 (North, South or None): North

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:
None

Run Hour Restrictions: None

LAR Attributes (Yes/No): Yes

If yes: Local Capacity Area (as of Confirmation Effective Date): Greater Bay Area

Product Type (Flexible/Generic): Flexible

If Generic: Unit NQC (as of the Confirmation Effective Date): N/A

If Flexible: Unit EFC (as of the Confirmation Effective Date): Varies by Month

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): Base

3.

RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

**4.
DELIVERY AND PAYMENT**

4.1 Delivery Period

The Delivery Period shall be [REDACTED], inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Year/Month	Contract Quantity (MWs)
[REDACTED]	

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the

applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such

Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement:

an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY PRICE TABLE

Contract Year/Month	RA Capacity Price (\$/kW-month)
[REDACTED]	

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5.**CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure

of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

**6.
RESERVED**

**7.
OTHER BUYER AND SELLER COVENANTS**

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8.

CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9.

BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

**10.
MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**11.
COLLATERAL REQUIREMENTS**

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

Silicon Valley Clean Energy Authority



DocuSigned by:
Girish Balachandran

By: _____

By: _____

Name: Andrew Novotny

Name: GIRISH Balachandran

Title: Vice President

Title: CEO

Final
CCA WSPP Standard RA Confirmation

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Leapfrog Power, Inc., a Delaware corporation (“Seller”) and **Silicon Valley Clean Energy** Authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of October 13, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated January 25, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Portfolio in the amount of the Contract Quantity. If Seller is not able to provide the full amount of the Contract Quantity from the Portfolio for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Portfolio in the amount of the Contract Quantity. If Seller is not able to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Portfolio in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If Seller is not able to provide the full amount of the Contract Quantity from the Portfolio as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Portfolio and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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CCA WSP Standard RA Confirmation

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for each day of the Delivery Period is firm and will not be excused for any reason except as excused by an express provision of this Agreement.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Portfolio's SC to submit, on a timely basis with respect to Purchaser's annual filing and for each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. In accordance with the CPUC RA Filing Guide, Seller and Buyer shall report the DR Load Impact Value on the applicable reports. The DR Load Impact Value shall be adjusted by T&D Line Loss Factors and the 15% Planning Reserve Margin adder. The total amount of Product identified and confirmed for each day of such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller may sell and deliver Product from each Shown Unit that meets the requirements set forth in Appendix B. In no event shall any Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific Proxy Demand Resource or other specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month and, if applicable, annual filing.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan

**Final
CCA WSP Standard RA Confirmation**

for validation before the applicable deadline for the Showing Month and, if applicable, annual filing.

- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product (i) from a Shown Unit if Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) if Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 Reductions in Contract Quantity

If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Portfolio during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Portfolio that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each day of each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any day of a Showing Month from a resource other than

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those Units in the Portfolio, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Portfolio and any Replacement Unit(s) for each day of the Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity from and identify replacement units that (i) have the same Capacity Attributes of the Units in the Portfolio originally identified in Appendix B, (ii) are accepted by the CAISO, and (iii) otherwise that satisfy the requirements of this Agreement (each such unit, a “Replacement Unit”), no later than the Notification Deadline for Purchaser’s Compliance Showings related to such Showing Month and, if applicable, annual filing;
- (b) Seller shall, or shall cause the Portfolio’s SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser’s Compliance Showings; and
- (c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

The designation of any Replacement Unit(s) by Seller shall not require Purchaser’s approval so long as such Replacement Unit(s) meet the “product” parameters in Appendix B.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, then any such Replacement Units shall be deemed part of the Portfolio for purposes of this Confirmation for that Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D (“Planned Outage Schedule”) for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser’s receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser’s requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

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2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that no such re-sale shall increase Seller's obligations hereunder other than as set forth in this Section 2.6(a) or require Seller to have any obligation to a Subsequent Purchaser. For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Portfolio's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Portfolio's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Portfolio's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.

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- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Portfolio's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Portfolio's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

**ARTICLE 3
PAYMENTS**

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that, notwithstanding Section 9.4 of the WSPP Agreement, if an invoice or portion thereof is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Purchaser shall make a monthly payment to Seller for Product delivered hereunder by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, or if the twentieth (20th) day is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the amount of Contract Quantity of Product actually delivered by Seller to Purchaser pursuant to and consistent with Section 2.1 and, if applicable, Section 2.3, for the applicable Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places).

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its

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successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

**ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS**

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction. Seller's reasonable and documented third party costs associated with taking

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commercially reasonable actions under this Section 4.2 for the benefit of Subsequent Purchasers shall be reimbursed by Purchaser.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for each Shown Unit during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity or, if applicable, the Shown Unit's Effective Flexible Capacity;
- (d) if applicable, Seller has notified either the Portfolio's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Portfolio's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Portfolio's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

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ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith and with commercially reasonable practices, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose information as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254

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and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information and Purchaser notifies Seller ahead of such release.

5.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can continue to perform their obligations regarding the purchase and sale of the Product sold hereunder in a manner that best maintains their respective original intentions.

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5.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.7 No Recourse to Members of Purchaser

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

5.8 [Reserved]

5.9 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

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- (c) Section 22.3(c) of the WSPP Agreement is amended by deleting the third sentence thereof and replacing it with the following:

“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”
- (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

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“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

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From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

5.10 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.11 Entire Agreement: No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

Leapfrog Power, Inc., a Delaware corporation

By: Thomas Folker

Name: Thomas Folker

Title: CEO

Silicon Valley Clean Energy Authority, a California joint powers authority

DocuSigned by:
Girish Balachandran
By: 5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

Approved as to form:

By: _____

Name:

Title:

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month and, if applicable, annual filing.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“Effective Flexible Capacity” has the meaning set forth in the Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, less any reductions to Contract Quantity for such day consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning set forth in the Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month and, if applicable, annual filing.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Portfolio” means the aggregated group of Proxy Demand Resources and, as applicable, other resources providing the Product under this Confirmation, consisting of Units and Replacement Units. The Shown Units in the Portfolio may be removed and replaced by Seller from time to time in accordance with the requirements of this Confirmation.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Proxy Demand Resource” or “PDR” has the meaning set forth in the Tariff.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a Proxy Demand Resource or other resource meeting the requirements specified in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means any Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

“Unit” means the Proxy Demand Resources described in Appendix B, as may be modified by Seller from time to time after the Effective Date to remove and/or replace Units with Replacement Units. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

**APPENDIX B-1-1
PORTFOLIO INFORMATION**

The following describes the Portfolio.

Portfolio Specific Information	
Resource Name	Leap DR
CAISO Resource ID	Multiple
SCID of Resource	LEAP
Minimum Portfolio NQC by month (in MW)	Jan: 0 Feb: 0 Mar: 0 Apr: 1 May: 2 Jun: 2 Jul: 2 Aug: 2 Sep: 2 Oct: 2 Nov: 1 Dec: 1
Portfolio EFC by month	Not Applicable
TAC Area	PG&E or CAISO System, as agreed by the Parties
Capacity Area	CAISO System
Resource Category as defined by the CPUC	DR

[Information for specific Shown Units may be provided after the Effective Date in accordance with the Agreement.]

Resource Name	(if other than Leap DR)
Resource Type	
Shown Unit Specific Information	
CAISO Resource ID	
SCID of Resource	(if other than LEAP)
Physical Location	
Unit NQC by month (e.g., Jan =50, Feb =65) (in MW)	
Resource Category as defined by the CPUC	(if other than DR)
Resource Fuel Type	(if other than DR)

**APPENDIX B-1-2
PRODUCT AND UNIT INFORMATION**

Product: RAR

Delivery period: [REDACTED]

Contract Quantity and Contract Price:

Showing Month and Year	RAR Contract Quantity (MW)	Contract Price (\$/kW-mo)
[REDACTED]		

**APPENDIX B-2-1
PORTFOLIO INFORMATION**

The following describes the Portfolio.

Portfolio Specific Information	
Resource Name	Leap DR
CAISO Resource ID	Multiple
SCID of Resource	LEAP
Minimum Portfolio NQC by month (in MW)	Jan: 1 Feb: 1 Mar: 1 Apr: 1 May: 2 Jun: 2 Jul: 2 Aug: 2 Sep: 2 Oct: 2 Nov: 1 Dec: 1
Portfolio EFC by month	Not Applicable
TAC Area	PG&E or CAISO System, as agreed by the Parties
Capacity Area	CAISO System
Resource Category as defined by the CPUC	DR

[Information for specific Shown Units may be provided after the Effective Date in accordance with the Agreement.]

Resource Name	(if other than Leap DR)
Resource Type	
Shown Unit Specific Information	
CAISO Resource ID	
SCID of Resource	(if other than LEAP)
Physical Location	
Unit NQC by month (e.g., Jan =50, Feb =65) (in MW)	
Resource Category as defined by the CPUC	(if other than DR)
Resource Fuel Type	(if other than DR)

**APPENDIX B-1-2
PRODUCT AND UNIT INFORMATION**

Product: RAR

Delivery period: [REDACTED]

Contract Quantity and Contract Price:

Showing Month and Year	RAR Contract Quantity (MW)	Contract Price (\$/kW-mo)
[REDACTED]		

**APPENDIX C
NOTICE INFORMATION**

Seller: Leapfrog Power, Inc	Purchaser: Silicon Valley Clean Energy Authority, a California joint powers authority
All Notices: Attn: Andrew Hoffman Phone: (415) 409-9783 Facsimile: N/A Duns: N/A Federal Tax ID Number: ██████████	All Notices: Attn: Girish Balachandran, CEO Phone: 408 721-5301 Facsimile: Duns: ██████████ Federal Tax ID Number: ██████████
Invoices: Attn: Thomas Folker Phone: (415) 216-5550 Facsimile: E-mail: ap@leap.energy	Invoices: Attn: SVCE Power Settlements Phone: 408 721-5301 Facsimile: E-mail: SVCEpowersettlements@svcleanenergy.org
Scheduling: Attn: Stefan Nagy Tel: (DA CAISO Desk) (412) 862-9205 Tel: (Real Time Desk) (412) 862-9205 Email: marketops@leap.energy	Scheduling: Attn: Z-Global Tel: (916) 221-4327 Email: eric@zglobal.biz
Wire Transfer: BNK: Silicon Valley Bank ABA: ██████████ ACCT: ██████████	Wire Transfer: BNK: River City Bank ABA: ██████████ ACCT: ██████████
Credit and Collections: Attn: Thomas Folker Phone: (415) 216-5550 Facsimile: N/A E-mail: ap@leap.energy	Credit and Collections: Attn: SVCE Power Settlements Phone: 408 721-5301 Facsimile: E-mail: SVCEpowersettlements@svcleanenergy.org
Defaults: Attn: Andrew Hoffman Phone: (415) 409-9783 Facsimile: N/A E-mail: andrew@leap.energy legal@leap.energy Additional notices of an Event of Default to: Address: Attn: Amaani Hamid	Defaults: Attn: Girish Balachandran, CEO Phone: 408 721-5301 Facsimile: E-mail: girish@svcleanenergy.org Additional notices of an Event of Default to: Address:

<p>Email: marketdev@leap.energy</p>	<p>Attn: Steve Hall Email: steve@hallenergylaw.com Phone: 408 721-5301</p>
	<p>Supply Plan Contact: Mark Thomas (email): mthomas@acespower.com Phone: (317) 344-7136</p>

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

TITLE	SVCE 2021 - 2022 RA Confirm
FILE NAME	WSPP Standard_SVCE_Final_10-13-20.docx
DOCUMENT ID	127f04b4fe72f8dc3731508e648fab2285e618bd
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History

 SENT	10 / 14 / 2020 00:41:34 UTC	Sent for signature to Thomas Folker (thomas@leap.ac) from amaani@leap.ac IP: 76.126.208.86
 VIEWED	10 / 14 / 2020 02:27:40 UTC	Viewed by Thomas Folker (thomas@leap.ac) IP: 172.4.91.228
 SIGNED	10 / 14 / 2020 02:28:02 UTC	Signed by Thomas Folker (thomas@leap.ac) IP: 172.4.91.228
 COMPLETED	10 / 14 / 2020 02:28:02 UTC	The document has been completed.

**IMPORT CAPABILITY TRANSFER
CONFIRMATION LETTER
BETWEEN
CITY OF SAN JOSÉ
AND
SILICON VALLEY CLEAN ENERGY**

This confirmation letter including all appendices hereto (“Confirmation”) confirms the transaction between **City of San José, a California municipality (“Seller”)** and **Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)**, each individually a “Party” and together the “Parties”, dated as of **October 9, 2020 (the “Confirmation Effective Date”)** in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation (the “Transaction”). This Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of July 28, 2020, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

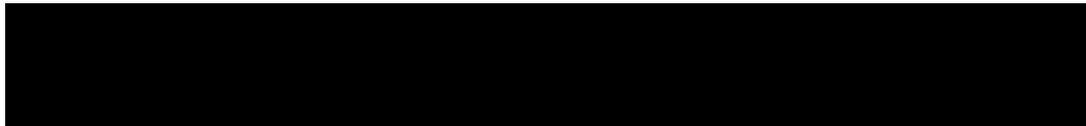
**ARTICLE 1
TRANSACTION**

1.1 Product

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Remaining Import Capability (the “Product”), at the Delivery Points in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

1.2 Delivery Period and Term

(a)



(b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.3 Contract Quantity, Contract Price, and Delivery Point

For the Delivery Period, Seller shall transfer the Product to Buyer in the amount as follows (the “Contract Quantity”), at the Contract Price, and for the following Delivery Points as specified in the Contract Quantity Table below:

Delivery Period	Delivery Point	Contract Quantity (MWs)	Contract Price (\$/kW-month)

ARTICLE 2 DELIVERY OBLIGATIONS

2.1 Delivery

Within three (3) Business Days from the Confirmation Effective Date, Seller shall transfer the Product to Buyer by registering the transfer with CAISO as a Bilateral Import Capability Transfer in the amount of the Contract Quantity for the applicable Contract Month, and completing any other action or documentation required by the CAISO to effect such transfer (the “Registration”).

2.2 Buyer’s Re-Sale of Product

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

ARTICLE 3 PAYMENT

3.1 One-Time Payment

Buyer shall make a One-Time Payment to Seller for the Product in accordance with Section 9 of the Master Agreement.

The One-Time Payment is calculated as follows:

$$\text{One-Time Payment} = \sum_i^n (A_i \times B_i \times 1,000)$$

where:

A = Contract Price (in \$/kW-month) for Contract Month *i*

B = Contract Quantity (in MW) transferred by Seller for Contract Month *i*

i = Each Contract Month

n = number of Contract Months

The One-Time Payment calculation shall be rounded to two decimal places.

3.2 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Section 9 of the Master Agreement against any future amounts it may owe to the other Party.

ARTICLE 4 CONFIDENTIALITY

Notwithstanding Section 30 of the Master Agreement, the Parties agree that:

- (a) This Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.);
- (b) both Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller's performance; and
- (c) in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price;

provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority or the CAISO to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

ARTICLE 5 COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 6 GENERAL PROVISIONS

6.1 Governing Law

Section 24 of the WSPP Agreement is deleted and replaced with the following: "This WSPP Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law."

6.2 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.3 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

6.4 No Recourse to Members of Buyer

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

6.5 Designated Fund and Limited Obligations

- (a) Seller is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Seller has created and set aside a designated fund (the "Designated Fund") for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Seller agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Seller's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Seller shall provide Buyer with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

- (b) **Limited Obligations.** Seller's payment obligations under the Agreement are special limited obligations of the Seller payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

6.6 City of San José Standard Provisions

- (a) **Nondiscrimination/Non-Preference.** Buyer shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Buyer will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Buyer from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Buyer to file, and cause any Buyer's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.
- (b) **Conflict of Interest.** Buyer represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Buyer certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Buyer shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Buyer has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Seller in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Buyer's violation of this subsection (b) is a material breach.
- (c) **Environmentally Preferable Procurement Policy.** Buyer shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this subsection (c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Seller to terminate this Agreement.

- (d) Gifts Prohibited. Buyer represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Buyer shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Buyer's violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Buyer represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Buyer shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

Acknowledged and agreed to as of the Confirmation Effective Date.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

CITY OF SAN JOSÉ, a California municipality

By:  _____
DocuSigned by: 5CA64B9AC4C24C3...
 Name: Girish Balachandran
 Title: CEO

By:  _____
DocuSigned by: A6FC383F37C14C3...
 Name: Jeanne Sole
 Title: Deputy Director of Power Resources

Approved as to form:

By:  _____
DocuSigned by: E3CE9F67735D498...
 Name: Luisa Elkins
 Title: Senior Deputy City Attorney

APPENDIX A DEFINED TERMS

“Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.

“Bilateral Import Capability Transfer” is the transfer of Remaining Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.

“Branch Group” means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.

“Buyer” has the meaning set forth in the introductory paragraph of this Confirmation and shall have the same meaning as “Purchaser” under the Master Agreement.

“CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“Confirmation” has the meaning set forth in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning set forth in the introductory paragraph of this Confirmation.

“Contract Month” means the month during the Delivery Period as set forth in the Contract Quantity Table in Section 1.3.

“Contract Price” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Contract Quantity” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning set forth in Section 1.2(a).

“Delivery Point” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

“Intertie” has the meaning set forth in the CAISO Tariff.

“Master Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“One-Time Payment” has the meaning set forth in Section 3.1.

“NOB” means the CAISO Branch Group corresponding to the CAISO Intertie NOB_ITC.

“Product” has the meaning set forth in Section 1.1.

“Registration” has the meaning set forth in Section 2. 1.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

“SC” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the introductory paragraph of this Confirmation.

“Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

“Term” has the meaning set forth in Section 1.2(b).

“WSPP Agreement” is defined in the introductory paragraph hereof.

**IMPORT CAPABILITY TRANSFER
CONFIRMATION LETTER
BETWEEN
CITY OF SAN JOSÉ
AND
SILICON VALLEY CLEAN ENERGY**

This confirmation letter including all appendices hereto (“Confirmation”) confirms the transaction between **Silicon Valley Clean Energy Authority, a California joint powers authority** (“Seller”) and **City of San José, a California municipality** (“Buyer”), each individually a “Party” and together the “Parties”, dated as of **October 9, 2020 (the “Confirmation Effective Date”)** in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation (the “Transaction”). This Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of July 28, 2020, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

**ARTICLE 1
TRANSACTION**

1.1 Product

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Remaining Import Capability (the “Product”), at the Delivery Points in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

1.2 Delivery Period and Term

- (a) 
- (b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.3 **Contract Quantity, Contract Price, and Delivery Point**

For the Delivery Period, Seller shall transfer the Product to Buyer in the amount as follows (the “Contract Quantity”), at the Contract Price, and for the following Delivery Points as specified in the Contract Quantity Table below:

Delivery Period	Delivery Point	Contract Quantity (MWs)	Contract Price (\$/kW-month)

ARTICLE 2 DELIVERY OBLIGATIONS

2.1 **Delivery**

Within three (3) Business Days from the Confirmation Effective Date, Seller shall transfer the Product to Buyer by registering the transfer with CAISO as a Bilateral Import Capability Transfer in the amount of the Contract Quantity for the applicable Contract Month, and completing any other action or documentation required by the CAISO to effect such transfer (the “Registration”).

2.2 **Buyer’s Re-Sale of Product**

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

ARTICLE 3 PAYMENT

3.1 **One-Time Payment**

Buyer shall make a One-Time Payment to Seller for the Product in accordance with Section 9 of the Master Agreement.

The One-Time Payment is calculated as follows:

$$\text{One-Time Payment} = \sum_i^n (A_i \times B_i \times 1,000)$$

where:

A = Contract Price (in \$/kW-month) for Contract Month *i*

B = Contract Quantity (in MW) transferred by Seller for Contract Month *i*

i = Each Contract Month

n = number of Contract Months

The One-Time Payment calculation shall be rounded to two decimal places.

3.2 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Section 9 of the Master Agreement against any future amounts it may owe to the other Party.

**ARTICLE 4
CONFIDENTIALITY**

Notwithstanding Section 30 of the Master Agreement, the Parties agree that:

- (a) This Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.);
- (b) both Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller's performance; and
- (c) in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price;

provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority or the CAISO to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

**ARTICLE 5
COLLATERAL REQUIREMENTS**

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

**ARTICLE 6
GENERAL PROVISIONS**

6.1 Governing Law

Section 24 of the WSPP Agreement is deleted and replaced with the following: "This WSPP Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law."

6.2 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.3 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

6.4 No Recourse to Members of Seller

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

6.5 Designated Fund and Limited Obligations

- (a) Buyer is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Buyer has created and set aside a designated fund (the "Designated Fund") for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

- (b) **Limited Obligations.** Buyer's payment obligations under the Agreement are special limited obligations of the Buyer payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

6.6 City of San José Standard Provisions

- (a) **Nondiscrimination/Non-Preference.** Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.
- (b) **Conflict of Interest.** Seller represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Seller has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Buyer in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (b) is a material breach.
- (c) **Environmentally Preferable Procurement Policy.** Seller shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this subsection (c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Buyer to terminate this Agreement.

- (d) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

Acknowledged and agreed to as of the Confirmation Effective Date.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

DocuSigned by:

 By: _____
5CA64B9AC4C24C3...
 Name: Girish Balachandran
 Title: CEO

CITY OF SAN JOSÉ, a California municipality

DocuSigned by:

 By: _____
A6FC383F37C14C3...
 Name: Jeanne Sole
 Title: Deputy Director of Power Resources

Approved as to form:

DocuSigned by:

 By: _____
E3CE9F67735D498...
 Name: Luisa Elkins
 Title: Senior Deputy City Attorney

APPENDIX A DEFINED TERMS

“Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.

“Bilateral Import Capability Transfer” is the transfer of Remaining Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.

“Branch Group” means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.

“Buyer” has the meaning set forth in the introductory paragraph of this Confirmation and shall have the same meaning as “Purchaser” under the Master Agreement.

“CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“Confirmation” has the meaning set forth in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning set forth in the introductory paragraph of this Confirmation.

“Contract Month” means the month during the Delivery Period as set forth in the Contract Quantity Table in Section 1.3.

“Contract Price” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Contract Quantity” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning set forth in Section 1.2(a).

“Delivery Point” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

“Intertie” has the meaning set forth in the CAISO Tariff.

“Master Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“One-Time Payment” has the meaning set forth in Section 3.1.

“NOB” means the CAISO Branch Group corresponding to the CAISO Intertie NOB_ITC.

“Product” has the meaning set forth in Section 1.1.

“Registration” has the meaning set forth in Section 2. 1.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

“SC” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth in the introductory paragraph of this Confirmation.

“Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

“Term” has the meaning set forth in Section 1.2(b).

“WSPP Agreement” is defined in the introductory paragraph hereof.

**CONFIRMATION LETTER
BETWEEN
MORGAN STANLEY CAPITAL GROUP INC.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the Transaction between Morgan Stanley Capital Group Inc. ("Morgan Stanley" or "Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCE" or "Buyer"), each individually a "Party" and together the "Parties," dated as of October 19, 2020 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the EEI Master Power Purchase and Sale Agreement dated November 23, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the "Master Agreement"), as amended and supplemented by this Confirmation, under the following terms and conditions. The definitions and provisions contained in this Confirmation, the Master Agreement, the RA Rules (as defined herein), and in the tariffs and/or protocols of the California Independent System Operator ("CAISO") as amended from time to time (the "CAISO Tariff" or the "Tariff"), shall apply to this Confirmation and are incorporated by reference; provided that, to the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts. This Confirmation supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction.

**ARTICLE 1
PRODUCT 1**

1.1. Product 1 – Contract Price, Contract Quantity, Delivery Term and Delivery Point

- (a) Product 1: WSPP Agreement Schedule C Firm Energy supplied from the Carbon Free Source (as defined in Exhibit A) ("Carbon Free Firm Energy"). The Product cannot be curtailed by Seller or Buyer for economic reasons.
- (b) Delivery Term: 
- (c) Hourly Contract Quantity: 
- (d) Delivery Point: Nevada Oregon Border (**NOB**) ("**NOB**"), north to south ("**NOB N-S**"), which is an Intertie. The Parties may subsequently agree to an alternate delivery point in writing, provided a transmission path is specified to such other delivery point and such other delivery point is an Intertie.
- (e) 
- (f) MCC Bucket: **MCC Bucket Category 1**

(g)



(h) Passage of Title: Seller represents and warrants that Seller holds the rights to the Product free and clear of all liens and encumbrances, and Seller agrees to convey and hereby conveys all such Product to Buyer free and clear of all liens and encumbrances as included in the delivery of the Product subject to the terms and conditions contained herein. As set forth in Section 10.3 of the Master Agreement, title and reporting rights to the Carbon Free Firm Energy shall pass from Seller to Buyer at the Delivery Point.

(i) Transmission and Agreed Transmission Path: Under this Confirmation and pursuant to Section 10 of the WSPP Agreement, the agreed transmission path for deliveries to the Delivery Point will be from the Carbon Free Source (as listed in Exhibit A) to Big Eddy and Big Eddy to NOB (each, an "Agreed Transmission Path").

For the purposes of Section 10 of the WSPP Agreement, "firm transmission" means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a "continuous physical transmission path" which shall provide for "direct delivery of electricity" (as such terms are defined in the Cap and Trade Regulations).

(j) Seller Delivery Obligation. Seller shall deliver Carbon Free Firm Energy in the amount of the Hourly Contract Quantity from Carbon Free Source into the CAISO on behalf of Buyer without substituting electricity from another source, as evidenced by e-Tags, or such other format acceptable to Buyer. Deliveries shall be measured for each hour that the Carbon Free Firm Energy is delivered to the CAISO but shall not exceed the lesser of corresponding amounts shown on the e-Tags or meter data from the Carbon Free Source.

(k) Reporting Requirements. Seller shall provide Buyer with all necessary documentation required to support and verify that delivery requirements have been met according to the Applicable Program, including but not limited to documentation demonstrating that the Carbon Free Source meets the CARB requirements of a Specified Source Facility, the Carbon Free Firm Energy is traceable to a specific generating facility, and that the electricity source claimed has been sold once and only once to a retail consumer.

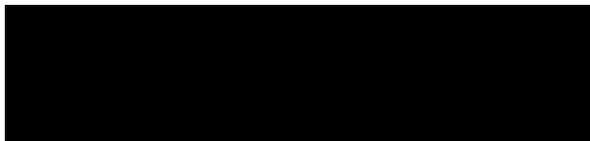
1.2. Special Conditions – Product 1

(a) Generally Accepted Utility Practice: All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.

(b) External Resource: Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.

(c) Product 1 Contract Price Components: The Parties acknowledge that the Contract Price is a per megawatt hour aggregation of the following components:

(i)



(ii)

(iii)



The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller), not to exceed the Minimum Monthly Delivery Quantity during any calendar month. For greater certainty, the Parties hereby acknowledge and agree that Seller may deliver more than the Minimum Monthly Delivery Quantity hereunder (“Additional Monthly Quantity”) during any calendar month; provided however (A) no Capacity Fee shall be due and payable for any such Additional Monthly Quantity and (B) no Attributes Fee shall be payable for Additional Monthly Quantities in excess of the undelivered portion of the 2021 Carbon Free Energy Contract Quantities under the Existing Carbon Free Confirmations. All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

(d) Additional Seller Representations: Seller represents and warrants to Buyer as follows:

- (i) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;
- (ii) as of the Confirmation Effective Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source’s host balancing authority area and is not committed to another balancing authority area (*i.e.* no double-counting);
- (iii) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;
- (iv) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Buyer hereunder has been sold once and only once by Seller;
- (v) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission on the last segment immediately preceding the CAISO balancing authority; and
- (vi) throughout the Delivery Term, Seller’s firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source’s host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.

For greater certainty, Seller’s performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

**ARTICLE 2
PRODUCT 2**

2.1. Product 2 – Scheduling Coordinator Services

- (a) Seller: Morgan Stanley Capital Group Inc.
- (b) Buyer: SVCE
- (c) Product 2: Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Buyer as Product 1.

2.2. Overview

The purpose of Product 2 is for Morgan Stanley to perform the required scheduling coordinator functions for the “resource” (as such term is used by the CPUC in D. 20-06-028, the Carbon Free Firm Energy). Although D.20-06-028 required the Buyer to take responsibility for ensuring that energy associated with an import RA contract is bid into, and delivered to, the CAISO markets, the CPUC’s decision also permitted the Buyer to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Morgan Stanley is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and has the requisite experience, skill and capability to perform the scheduling obligations assumed by it in providing the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Morgan Stanley will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities defined below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Buyer’s Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink as required and contemplated by CPUC D.20-06-028.

2.3. Scheduling Coordinator Services

Morgan Stanley agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy procured by Buyer as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below (“Scheduling Coordinator Services”):

- (a) For each hour in which energy is to be delivered to the Delivery Point, Morgan Stanley will Bid or Self-Schedule (as such terms are defined in the CAISO Tariff) the Carbon Free Firm Energy into the CAISO Day Ahead Market and Real-Time Market, *provided* if Morgan Stanley submits Bid(s) (other than Self-Schedule) such Bid(s) for each hour that is an Availability Assessment Hour, Morgan Stanley’s Bid(s) shall be at a price between negative [REDACTED] (“Bidding Requirement”).
- (b) Working with CAISO and Buyer to set up a Resource ID associated with Morgan Stanley’s SCID for purposes of undertaking the services in paragraph (a) above (“RA Resource ID”), which shall be set up as a CAISO system resource;
- (c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;

- (d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:
 - (i) Morgan Stanley’s Scheduling Coordinator PSE in the “physical path” at and from the Delivery Point to the Sink,
 - (ii) Buyer’s PSE in the “market path” at the Delivery Point,
 - (iii) Buyer’s PSE as the last PSE in the “physical path”,
 - (iv) RA Resource ID in the Misc(Token/Value) field in “physical path” at and from the Delivery Point to the Sink, and
 - (v) A CAISO Aggregated Pricing Node as the Sink; and
- (e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Exhibit B for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Exhibit B due to changes in Carbon Free Source, CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

2.4. Seller’s Scheduling Contacts

	Phone	Fax
Pre-scheduler:	604.658.8116	604.695.8809
Real-Time:	604.658.8120	

2.5. Buyer’s Identifiers

Buyer’s SCID: LSVCE

Buyer’s PSE: TBD

2.6. Special Conditions – Product 2

- (a) Resource Adequacy Plan: Buyer shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan (“RA Plan”), as required by the CAISO Tariff, that explicitly identifies the Delivery Profile hours as the temporal constraint/limitation and such RA Plan shall otherwise match the Supply Plan submitted by Morgan Stanley.
- (b) CAISO Acceptance/Rejection: Morgan Stanley shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Morgan Stanley. If, in any hour of the Delivery Term, CAISO rejects the Bid(s) (including Self-

Schedule) submitted by Morgan Stanley in the CAISO Day Ahead Market and Real-Time Market, then

- (i) if Morgan Stanley Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and
 - (ii) if Morgan Stanley does not Bid in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller, no Capacity Fee shall be due for such hour, and, unless Seller is otherwise excused from its delivery obligations, Buyer shall be entitled to such remedies as are provided hereunder and in the Master Agreement.
- (c) Energy Adjustment: For each month of the Delivery Term, and in consideration of Morgan Stanley retaining any and all revenues received as a result of any CAISO awards from the Bid(s) (including or Self-Schedule(s)) submitted by Morgan Stanley (among other things), Morgan Stanley will credit Buyer the Energy Adjustment. “Energy Adjustment” means the LMP Index minus ██████████ for each MWh of the Carbon Free Firm Energy delivered to Buyer in such month pursuant to this Confirmation.

ARTICLE 3 GENERAL PROVISIONS

3.1 Uncontrollable Force/Force Majeure

The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPP Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:

- (a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Effective Date, will be considered Uncontrollable Force and Force Majeure,
- (b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
- (c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Morgan Stanley for any hour(s) of the Delivery Term, subject to Section 1.2(c), Morgan Stanley and Buyer shall be relieved of their obligation to sell and deliver or purchase and receive, respectively,

the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Morgan Stanley shall be relieved of its SC Services obligations for such hour(s), and

- (d) Morgan Stanley will use commercially reasonable efforts to communicate (verbally or electronically in writing, including via eTags) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Morgan Stanley is able to deliver to Buyer during the affected hours.

3.2 Monthly Reporting

The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (e.g. transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bid Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Buyer having delivery visibility through inclusion on all NERC E-Tags, Morgan Stanley will provide a monthly report that includes a lessor of analysis showing eTags, and meter readings from the Carbon Free Source.

3.3 Electricity Importer

As a result of the provision of Scheduling Services, Morgan Stanley will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Morgan Stanley will be responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation.

3.4 Confidentiality

Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 3.5(b), provided such Party shall redact commercial terms (e.g. Contract Price) prior to disclosure or disclose the Confirmation confidentially to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

3.5 RA Requirements / Change in Law

- (a) The Parties acknowledge that Buyer has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Buyer acknowledges that Seller makes no representation or warranty that Product 1 as procured by Buyer will be eligible for or can be used or counted toward Buyer's resource adequacy obligations pursuant to the RA Requirements.
- (b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Buyer's compliance filings to obtain the CPUC's guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Buyer's name.

- (c) It is Buyer's sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and (ii) determine the appropriate maximum cumulative capacity bucket(s).
- (d) If there is a Change in Law that (i) materially adversely changes or affects a Party's obligations hereunder or (ii) results in Buyer being unable to use Product 1 to meet its RA Requirements, the Parties shall work in good faith to try and revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Buyer to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days' written notice from one Party following the Change in Law ("Negotiation Period"), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 3.8, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties *provided* that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

3.6 Seller Indemnification / Termination

To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Buyer or other third party contracting directly or indirectly with Buyer, then

- (a) Seller agrees to indemnify Buyer for any monetary penalties directly resulting from Seller's nonperformance hereunder as assessed against Buyer by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Buyer following notice from Seller of its nonperformance; and
- (b) in addition to Buyer's other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Buyer may terminate this Confirmation upon written notice to Seller, *provided* such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 3.8, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no

event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

3.7 Survival

To the extent this Confirmation is terminated by either Party as provided in Section 3.5 or 3.6 and Morgan Stanley, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Morgan Stanley incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For greater certainty, neither Party will make any further binding commitments to CAISO (e.g. no filing of monthly RA Plans or Supply Plans) after the effective date of termination.

3.8 Relationship of the Parties

The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.

[Signatures appear on the following page.]

Acknowledged and agreed to as of the Confirmation Effective Date.

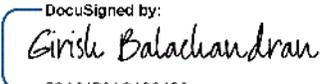
**MORGAN STANLEY CAPITAL GROUP
INC.**

Sign: 

Print: Parker Corbin

Title: Vice President

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

Sign: 

Print: Girish Balachandran

Title: CEO

EXHIBIT A**CARBON FREE SOURCE**

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the “Carbon Free Source”).

NERC Source	Facility and Unit Name	Location	CARB ID#
MSCG_GCPD	Wanapum Dam	Washington State	500054
MSCG_GCPD	Priest Rapids Dam	Washington State	500054
Chelan System	Rocky Reach Dam	Washington State	500055
Chelan System	Rock Island Dam	Washington State	500003
Idaho System	Lucky Peak Dam	Idaho State	500046

EXHIBIT B
SAMPLE NERC E-TAG

Market Path									
PSE	Product	Contract	Misc Info						
MSCG01	G-F		Yes						
LSVCE	L		No						

Physical Path									
BA	TSP	MO	PSE	POR	POD	Sched Entities	Contract	Misc Info	Loss
GCPD			MSCG01	Source:	MSCG_GCPD			No	
	BPAT		MSCG01	BPAT.GCPD	BigEddy	BPAT		No	
	BPAT		MSCG01	BigEddy	NOB	BPAT		No	
	CISO	CISO	MSCG01	NOB	SYLMAR	LDWP		No	
	CISO	CISO	MSCG01	SYLMAR	SP15	CISO		Yes	
CISO		CISO	LSVCE	Sink:	SP15			No	

Transmission Allocation					
TSP	Owner	Product	OASIS	NITS Resource	Misc Info
BPAT (1)	MSCG01	7-F	10031		No
BPAT (2)	MSCG01	7-F	10031		No
CISO (1)	MSCG01	7-F	MSCG_NOB_I_F_IMS010		No
CISO (2)	MSCG01	7-F	MSCG_NOB_I_F_IMS010		No

EXHIBIT C

DEFINITIONS

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

“AAH” or “Availability Assessment Hours” means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Confirmation Effective Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending (“HE”) 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays.

“Applicable Program” means the Cap and Trade Regulations or the PSD Regulations.

“Buyer”, as used in the Master Agreement, means Buyer.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively).

“CARB” means the California Air Resources Bureau of the California Environmental Protection Agency.

“CAISO Tariff” means the FERC-approved electric tariff of the California Independent System Operator Corporation (“CAISO”) and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

“Change in Law” means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Confirmation Effective Date.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the RA Requirements.

“Effective Date” means the date on which both Parties have executed and delivered this Confirmation.

“Existing Carbon Free Confirmations” means, collectively, (a) that certain Confirmation between the Parties dated December 15, 2016 for the purchase and sale of Carbon Free Energy, as amended by that certain First Amendment to Confirmation dated as of February 12, 2018 and (b) that certain Confirmation between the Parties dated February 23, 2018 for the purchase and sale of Carbon Free Energy.

“Federal Holidays” means legal public holidays as set forth in 5 USC § 6103(a).

“Firm Transmission” means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

“Flat” means all Off-Peak and On-Peak hours (24x7).

“Generally Accepted Utility Practice” means a practice established by the Western Electricity Coordinating Council (“WECC”) or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

“Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission (“FERC”) and California Public Utilities Commission (“CPUC”).

“LMP Index” means, for any day of delivery, the day-ahead hourly Locational Marginal Price (“LMP”) at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for NP 15) (“NP 15 Trading Hub”) for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

“MCC Bucket(s)” means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

“MCC Bucket Category 1” means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) every Monday through Friday, for 4 consecutive hours between 4 pm through 9 pm, and at least 40 hours per month from May through September.

“NERC Holiday” means any day designated as a holiday by NERC.

“Off-Peak” means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

“On-Peak” means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

“PSD Regulations” means the Power Source Disclosure Program regulations (California Code of Regulations Title 20, Division 2, Chapter 3, Article 5, Sections 1390 through 1394).

“RA Requirements” means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC’s currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 20-06-031 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

“RA Termination Event” means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, *and* (ii) such unexcused failure by Seller is likely to cause Buyer to not (or no longer) be able to count Product 1 toward its RA Requirements.

“Scheduling Coordinator” has the meaning given in the CAISO Tariff.

“Sink” means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

“Specified Source Facility” means a power source registered by an electric power entity with CARB that is intended to be claimed in an Emissions Data Report pursuant to section 95111(g)(1) of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions in the state of California.

**AMENDMENT
TO
CONFIRMATIONS**

This AMENDMENT TO CONFIRMATIONS (this “Amendment”), dated as of October 19, 2020 (the “Effective Date”), is entered into by and between Morgan Stanley Capital Group Inc. (“Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”), each referred to herein individually as a “Party” and collectively as the “Parties.” This Amendment is being provided pursuant to and in accordance with the terms and provisions of the Master Power Purchase and Sale Agreement between the Parties dated November 23, 2016 (the “Master Agreement”) and constitutes part of and is subject to the terms and provisions of such Master Agreement. This Amendment, the Confirmations (as defined below), and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

RECITALS

WHEREAS, the Parties entered into that certain Confirmation dated December 15, 2016 for the purchase and sale of Carbon Free Energy, as amended by that certain First Amendment to Confirmation dated as of February 12, 2018 (“Confirmation No.1”);

WHEREAS, the Parties entered into that certain Confirmation dated February 23, 2018 for the purchase and sale of Carbon Free Energy (“Confirmation No.2”);

WHEREAS, Confirmation No.1 and Confirmation No. 2 shall collectively be referred to herein as the “Confirmations”;

WHEREAS, the Parties entered into that certain Confirmation dated on or about October __, 2020 for the purchase and sale of Carbon Free Firm Energy during June 1, 2021 through September 30, 2021 (the “CF Firm Energy Transaction”);

WHEREAS, the Parties desire to amend the Confirmations as provided below; and

WHEREAS, in accordance with the Confirmations, any amendment, modification or supplement to the Confirmations shall be entered into only upon a writing signed by both Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. Amendments to the Confirmations.

(a) [Redacted]

(b) [Redacted]

Section 2. Miscellaneous.

(a) Capitalized Terms. All capitalized terms used in this Amendment which are not defined herein shall have the meaning ascribed to such terms in the Agreement.

(b) Effect of Amendment. All other provisions of the Confirmations remain in full force and effect, and all rights, duties and obligations remain unchanged except as expressly provided in this Amendment. If there is a conflict between the terms and conditions set forth in this Amendment and the terms and conditions set forth in the Confirmations, the terms set forth in this Amendment shall control.

(c) Entire Agreement. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.

(d) Representation. Each Party hereby represents and warrants to the other Party hereto that the execution, delivery and performance hereof by it are within its powers, and have been duly authorized by all necessary action and that this Amendment constitutes its legal, valid and binding obligation.

(e) Governing Law. This Amendment will be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

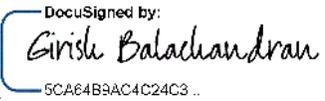
(f) Counterparts. This Amendment may be executed and delivered in counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

**MORGAN STANLEY CAPITAL GROUP
INC.**

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

Sign: 

Sign: 

Print: Parker Corbin

Print: Girish Balachandran

Title: Vice President

Title: CEO

**CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
MARIN CLEAN ENERGY
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Marin Clean Energy**, a California joint powers authority ("Buyer") and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of **October 16, 2020** (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of July 28, 2020, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 11** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 12** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 13** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 14** "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 15** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 16** "CAISO" means the California Independent System Operator Corporation or its successor.
- 17** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 18** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 19** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 110** "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.

- 1.11** “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.12** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the “Contract Quantity (MWs) Table” in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13** “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.15** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

- 123** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 124** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 125** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 126** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 127** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 128** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 129** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 130** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 131** “Non-Excusable Event” means any event, other than a Planned Outage that is acceptably noticed pursuant to the Notification Deadline and those events described under the definition of “Service Schedule B Commitment Service” in the WSPP Agreement that excuse Seller’s performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller’s failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 132** “Notification Deadline” has the meaning specified in Section 4.5 hereof.
- 133** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 134** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

- 135** “Product” has the meaning specified in Article 3 hereof.
- 136** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 137** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 138** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 139** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 140** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 141** “Replacement Unit” has the meaning specified in Section 4.5.
- 142** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 143** “Scheduling Coordinator” has the same meaning as in the Tariff.
- 144** “Seller” has the meaning specified in the introductory paragraph hereof.
- 145** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 146** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 147** “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 148** “Transaction” for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 149** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

- 150** “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 151** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 152** “WSPP Agreement” has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	Colgate Powerhouse Unit 1
Location	Yuba County, CA
CAISO Resource ID	COLGAT_7_UNIT 1
Unit NQC	Varies
Unit EFC	N/A
Resource Type	Hydroelectric
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	Sierra / PG&E Other
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the “Product”) and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess

of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: [REDACTED], inclusive.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

CONTRACT QUANTITY (MWs)

Contract Year and Months	Total LAR Contract Quantity (MWs)

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to (i) a Planned Outage as set forth in Section 4.4(a) above or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement

Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

- (c) If Seller fails to provide Buyer any portion of the Designated RA Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase such Product from a third party. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof to the extent the failure to deliver the Contract Quantity is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.
- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error, and are rejected by CAISO or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered to Buyer, including pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

RA CAPACITY PRICE TABLE

Contract Year and Months	LAR Capacity Price (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to

Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the

applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that “commercially reasonable actions” under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party’s applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the information regarding this Transaction to the Scheduling Coordinator of each Unit as necessary for such Scheduling Coordinator to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a subsequent purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. JOINT POWERS AUTHORITY

Each Party hereby acknowledges and agrees that the other Party is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (California Government Code Sections 6500 et seq.) and is a public entity separate and distinct from its members. Each Party shall solely be responsible for all of such Party's debts, obligations and liabilities accruing and arising out of this

Agreement, and each Party agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of the other Party's members, any cities or counties participating in the other Party's community choice aggregation program, or any of the other Party's retail customers in connection with the Transaction to which this Confirmation applies.

ARTICLE 13. ENTIRE AGREEMENT; NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties

ARTICLE 14. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

[Signatures appear on the following page]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY**

By: 
5CA64B9AC4C24C3...

Name: GIRISH Balachandran

Title: CEO

**MARIN CLEAN ENERGY, A CALIFORNIA JOINT
POWERS AUTHORITY**

By: 
DocuSigned by:
A59878416EBC4F8...

Name: Dawn Weisz

Title: CEO

**CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
MARIN CLEAN ENERGY
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Marin Clean Energy**, a California joint powers authority ("Seller") and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 16, 2020 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of July 28, 2020, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 11** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 12** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 13** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 14** "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 15** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 16** "CAISO" means the California Independent System Operator Corporation or its successor.
- 17** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 18** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 19** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 110** "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.

- 1.11** “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.12** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the “Contract Quantity (MWs) Table” in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13** “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.15** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

- 123** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 124** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 125** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 126** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 127** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 128** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 129** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 130** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 131** “Non-Excusable Event” means any event, other than a Planned Outage that is acceptably noticed pursuant to the Notification Deadline and those events described under the definition of “Service Schedule B Commitment Service” in the WSPP Agreement that excuse Seller’s performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller’s failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 132** “Notification Deadline” has the meaning specified in Section 4.5 hereof.
- 133** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 134** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

- 135** “Product” has the meaning specified in Article 3 hereof.
- 136** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 137** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 138** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 139** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 140** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 141** “Replacement Unit” has the meaning specified in Section 4.5.
- 142** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 143** “Scheduling Coordinator” has the same meaning as in the Tariff.
- 144** “Seller” has the meaning specified in the introductory paragraph hereof.
- 145** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 146** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 147** “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 148** “Transaction” for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 149** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

- 150** “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 151** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 152** “WSPP Agreement” has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	Bear Mountain Limited
Location	Kern, CA
CAISO Resource ID	BEARMT_1_UNIT
Unit NQC	Varies
Unit EFC	N/A
Resource Type	Natural Gas
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	Kern / PG&E Other
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the “Product”) and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess

of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be:



4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

CONTRACT QUANTITY (MWs)

Contract Year and Months	Total LAR Contract Quantity (MWs)

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to (i) a Planned Outage as set forth in Section 4.4(a) above or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement

Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

- (c) If Seller fails to provide Buyer any portion of the Designated RA Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase such Product from a third party. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof to the extent the failure to deliver the Contract Quantity is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.
- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error, and are rejected by CAISO or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered to Buyer, including pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

RA CAPACITY PRICE TABLE

Contract Year and Months	LAR Capacity Price (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to

Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the

applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that “commercially reasonable actions” under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party’s applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the information regarding this Transaction to the Scheduling Coordinator of each Unit as necessary for such Scheduling Coordinator to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a subsequent purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. JOINT POWERS AUTHORITY

Each Party hereby acknowledges and agrees that the other Party is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (California Government Code Sections 6500 et seq.) and is a public entity separate and distinct from its members. Each Party shall solely be responsible for all of such Party's debts, obligations and liabilities accruing and arising out of this

Agreement, and each Party agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of the other Party's members, any cities or counties participating in the other Party's community choice aggregation program, or any of the other Party's retail customers in connection with the Transaction to which this Confirmation applies.

ARTICLE 13. ENTIRE AGREEMENT; NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties

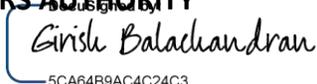
ARTICLE 14. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

[Signatures appear on the following page]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

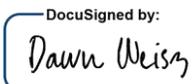
**SILICON VALLEY CLEAN ENERGY
AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY**

By: 
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Name: Girish Balachandran

Title: CEO

**MARIN CLEAN ENERGY, A CALIFORNIA JOINT
POWERS AUTHORITY**

By: 
A50878416EBC4F8...

Name: Dawn Weisz

Title: CEO

**CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
MARIN CLEAN ENERGY
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Marin Clean Energy**, a California joint powers authority ("Seller") and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of **October 16, 2020** (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of July 28, 2020, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 11** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 12** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 13** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 14** "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 15** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 16** "CAISO" means the California Independent System Operator Corporation or its successor.
- 17** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 18** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 19** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 110** "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.

- 1.11** “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.12** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the “Contract Quantity (MWs) Table” in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13** “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.15** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

- 123** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 124** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 125** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 126** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 127** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 128** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 129** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 130** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 131** “Non-Excusable Event” means any event, other than a Planned Outage that is acceptably noticed pursuant to the Notification Deadline and those events described under the definition of “Service Schedule B Commitment Service” in the WSPP Agreement that excuse Seller’s performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller’s failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 132** “Notification Deadline” has the meaning specified in Section 4.5 hereof.
- 133** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 134** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

- 135** “Product” has the meaning specified in Article 3 hereof.
- 136** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 137** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 138** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 139** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 140** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 141** “Replacement Unit” has the meaning specified in Section 4.5.
- 142** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 143** “Scheduling Coordinator” has the same meaning as in the Tariff.
- 144** “Seller” has the meaning specified in the introductory paragraph hereof.
- 145** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 146** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 147** “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 148** “Transaction” for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 149** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.

- 150** “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 151** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 152** “WSPP Agreement” has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	Fresno Peaker
Location	Fresno, CA
CAISO Resource ID	AGRICO_6_PL3N5
Unit NQC	22.69
Unit EFC	22.69
Resource Type	Natural Gas
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	1
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	Fresno / PG&E Other
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the “Product”) and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess

of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: [REDACTED] inclusive.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

CONTRACT QUANTITY (MWs)

Contract Year and Months	Total LAR Contract Quantity (MWs)

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to (i) a Planned Outage as set forth in Section 4.4(a) above or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The “Notification Deadline” in respect of a Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a “Replacement Unit”), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.
- (c) If Seller fails to provide Buyer any portion of the Designated RA Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase such Product from a third party. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof to the extent the failure to deliver the Contract Quantity is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit’s Scheduling Coordinator Supply Plan.
- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer’s instruction to withhold all or part of the Contract Quantity from Seller’s Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error, and are rejected by

CAISO or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPF Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or

- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered to Buyer, including pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

RA CAPACITY PRICE TABLE

Contract Year and Months	LAR Capacity Price (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity

sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement

applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous

- obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
 - (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
 - (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
 - (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
 - (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
 - (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
 - (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the information regarding this Transaction to the Scheduling Coordinator of each Unit as necessary for such Scheduling Coordinator to timely submit accurate Supply

Plans. Buyer may disclose information related to this Transaction to a subsequent purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. JOINT POWERS AUTHORITY

Each Party hereby acknowledges and agrees that the other Party is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (California Government Code Sections 6500 et seq.) and is a public entity separate and distinct from its members. Each Party shall solely be responsible for all of such Party's debts, obligations and liabilities accruing and arising out of this Agreement, and each Party agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of the other Party's members, any cities or counties participating in the other Party's community choice aggregation program, or any of the other Party's retail customers in connection with the Transaction to which this Confirmation applies.

ARTICLE 13. ENTIRE AGREEMENT; NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties

ARTICLE 14. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or

scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

[Signatures appear on the following page]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY**

DocuSigned by:
Girish Balachandran
By: 5CA64B9AC4C24C3
Name: GIRISH Balachandran
Title: CEO

**MARIN CLEAN ENERGY, A CALIFORNIA JOINT
POWERS AUTHORITY**

DocuSigned by:
Dawn Weisz
By: A59878416EBC4E8
Name: Dawn Weisz
Title: CEO

**MASTER POWER PURCHASE AND SALE AGREEMENT
RESOURCE ADEQUACY CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY (“PARTY A”)
AND
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between Party A and Party B, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25th, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1
TRANSACTION TERMS**

Buyer: Party A

Seller: Party B

Product: The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller’s local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

Delivery Period: [REDACTED] inclusive; [REDACTED], inclusive.

Contract Quantity and Contract Price: The Contract Quantity and Contract Price for each day of each Showing Month during the Delivery Period shall be set forth in Appendix B.

**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Firm RA Product

Seller’s obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

2.2 Seller To Identify Shown Unit

- (a)** Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit information no later than:
 - (i)** Fifteen (15) calendar days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, if the Confirmation Effective Date is at least fifteen (15) calendar days before such Compliance Showing deadline; or
 - (ii)** One (1) business day from the Confirmation Effective Date if the Confirmation Effective Date is less than fifteen (15) calendar days from the Compliance Showing. Section 2.3 of this Confirmation does not apply when the Confirmation Effective Date is within fifteen (15) calendar days of the Compliance Showing.
- (b)** The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC.
- (c)** Seller's notice under this Section 2.2 shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within five (5) Business Days. Provided such Shown Unit meets the requirements of this Confirmation, this second Shown Unit shall be deemed acceptable to and approved by Buyer upon receipt. This section does not apply if the Confirmation Effective Date is within fifteen (15) calendar days of the relevant Compliance Showing deadline.
- (d)** Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2(c), then any such Shown Unit will be automatically deemed the Unit from which the Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.3 Seller To Provide Alternate Capacity

- (a)** If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.
- (b)** If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit

and identify the proposed Alternate Unit meeting the Product characteristics specified in Appendix B no later than five (5) calendar days before the relevant deadlines for the submission of Compliance Showings related to the applicable Showing Month. Seller's notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one (1) Business Day of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Alternate Unit. If Buyer timely objects, Seller must identify another Alternate Unit within two (2) Business Days. Provided such Alternate Unit meets the requirements of a Shown Unit under this Confirmation, this second Alternate Unit is deemed acceptable to and approved by Buyer upon receipt.

- (c) Once the Alternate Unit is approved or deemed approved in accordance with Section 2.3(b), then any such Alternate Unit will be automatically deemed the Unit from which Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.4 Delivery of Product

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:
 - (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
 - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit.
 - (iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article 7 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.

2.5 Damages for Failure to Provide Capacity

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

For each applicable day during the Showing Month included in the Delivery Period in which the Buyer's Monthly Payment has been received by Seller in accordance with Section 3.1 of this Confirmation only, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kW per MW.

2.6 Indemnities for Failure to Deliver Contract Quantity

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or CAISO resulting from any of the following:
 - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period and such failure results in the imposition of penalties, fines or costs assessed against Buyer; or
 - (ii) A Unit's Scheduling Coordinator's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

2.7 Buyer's Re-Sale of Product

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the Competitive Solicitation Process. If Buyer re-sells Product, Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent

purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to any subsequent purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.5 and 2.6.

- (b) If Buyer exercises its right to re-sell the Product, Buyer shall notify Seller in writing that such sale has occurred by providing to Seller the information described in Appendix C ("Re-sale Plan"). The Re-sale Plan shall be provided no later than three (3) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month, except where Buyer exercises its rights under Article 7, then Buyer shall notify Seller in accordance with deadlines described in Article 7. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, and such notice shall include all updates to the information in Appendix C in accordance with the deadlines described in this Section 2.7(b).

ARTICLE 3 **PAYMENT**

3.1 Monthly Payment

Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

$$\text{Monthly Payment} = Q \times P \times CF$$

where:

- Q = The Contract Quantity of Product to be delivered by Seller to Buyer pursuant to Appendix B and consistent with Section 2.4 for the Showing Month
- P = The Contract Price for the Showing Month, expressed in dollars per kW-month, as stated in Appendix B
- CF = The conversion factor equal to 1,000 kW per MW

The Monthly Payment calculation shall be rounded to two decimal places.

If the Confirmation Effective Date is more than fifteen (15) calendar days prior to the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, payment shall be paid by Buyer and received by Seller no later than fifteen (15) calendar days prior to the deadlines for the corresponding Compliance Showings applicable to the Showing Month. If the Confirmation Effective Date is fifteen (15) calendar days or less from the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, the Monthly Payment shall be made by Buyer and received by Seller no later than five (5) Business days following the Confirmation Effective Date.

3.2 Allocation of Other Payments and Costs

- (a) Seller is entitled to retain any revenues it may receive from, and shall pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a subsequent purchaser of Resold Product fails to remit those revenues to Seller.

If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer.

Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

- (b) In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale.
- (d) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

ARTICLE 4 **CAISO OFFER REQUIREMENTS**

Seller is responsible for, as applicable, scheduling or causing the applicable Unit's Scheduling Coordinator to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or

operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator (unless Seller is the Scheduling Coordinator), owner, or operator for such noncompliance.

ARTICLE 5
OTHER BUYER AND SELLER COVENANTS

5.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions (including the execution of documents or instruments) reasonably necessary to ensure Buyer's right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.7. The Parties shall make commercially reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations.

5.2 Representations, Warranties and Covenants

- (a) Seller represents and warrants to Buyer throughout the Delivery Period that:
- (i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
 - (ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
 - (iii) each Unit's Scheduling Coordinator, owner and operator is obligated to comply with applicable laws, including the Tariff, relating to the Product;
 - (iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit; and
 - (v) Seller has notified either the Scheduling Coordinator of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer, or, if applicable, to a subsequent purchaser.
- (b) Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit;

- (c) Seller covenants as follows:
 - (i) Seller shall not offer, and shall ensure that the Unit's Scheduling Coordinator does not offer, any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall promptly notify Buyer, or shall cause the Unit's Scheduling Coordinator to promptly notify Buyer within one (1) Business Day of the time Seller receives notification from CAISO. If CAISO makes such a designation, Seller shall not accept, and shall ensure that the Unit's Scheduling Coordinator does not accept, any such designation by CAISO unless and until Buyer has agreed to accept such designation; and
 - (ii) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 5.2(c)(i) is true and correct
- (d) Each Party covenants to the other Party throughout the Delivery Period to comply with the Tariff, relating to the Product.

5.3 Counterparts

This Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any other counterpart so delivered shall have the same legal effect as an original.

ARTICLE 6 CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement Review Group, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price.

ARTICLE 7
HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Buyer shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Buyer's request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer's use as Substitute Capacity only for Planned Outages within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day of the Planned Outage for which Buyer seeks to use such Substitute Capacity as required by the CAISO. The amount of Contract Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.5 or 2.6. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Article 7.

Notwithstanding anything to the contrary in Sections 2.6, Seller shall not be liable for any costs, penalties, or fines assessed against Buyer by the CAISO as a result of Seller's failure to make Substitute Capacity available to Buyer if Buyer did not timely comply with the notification requirements of this Article 7.

ARTICLE 8
COLLATERAL REQUIREMENTS

8.1 Party A Collateral Requirements

- (a) Notwithstanding anything to the contrary contained in the Master Agreement, Party A shall, within five (5) Business Days following the Confirmation Effective Date, provide to, and maintain with, Party B a Fixed Independent Amount as long as Party A or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and Baa3 from Moody's. The "Fixed Independent Amount" shall be 20% of the sum of the Monthly Payments for all unpaid months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Section 8.2 of the Master Agreement, entitled "Party B Credit Protection", and all corresponding provisions to Section 8.2 of the Master Agreement, such Fixed Independent Amount for Party A shall be added to the Exposure Amount for Party B and subtracted from the Exposure Amount for Party A.
- (b) If the conditions in subsections (i) and (ii) of this Section 8.1(b) are satisfied throughout the Delivery Period, then this Confirmation's Fixed Independent Amount shall not apply for that time period during which all such conditions are satisfied:

- (i) Party A's customers are PG&E's distribution or transmission customers and PG&E is the billing agent for those customers; and
 - (ii) PG&E is the provider of last resort pursuant to Cal. Pub. Util. Code Section 451 et seq. and applicable law for Party A's retail electric customers.
- (c) If at any time during the Delivery Period, one or more of the conditions in subsections (i) and (ii) of Section 8.1(b) is no longer satisfied, and Party B has provided Party A with written notice of such failure to satisfy (Condition Notice), then Party A shall comply with the credit requirements of Section 8.1(a), above by that date which is no later than thirty (30) calendar days following the date of the Condition Notice.

8.2 Party B Collateral Requirements

Section 8.1 of the Master Agreement, entitled "Party A Credit Protection", and all corresponding provisions to Section 8.1 of the Master Agreement do not apply to this Confirmation.

8.3 Current Mark-to-Market Value

For the purposes of calculating Exposure pursuant to the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction, consequently affecting each Party's Exposure.

ARTICLE 9

ADDITIONAL MASTER AGREEMENT AMENDMENTS

9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation and with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the Master Agreement:

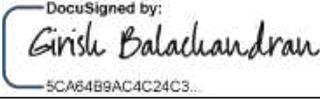
"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties, fines or costs, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute

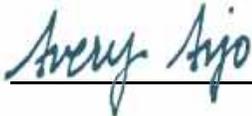
resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

Silicon Valley Clean Energy Authority, a California joint powers authority

Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

By: 
Name: Girish Balachandran
Title: CEO
Date: 10/14/2020

By: 
Name: Avery Arjo
Title: Portfolio Management Analyst, Exp.
Date: 10/20/2020

APPENDIX A **DEFINED TERMS**

For purposes of this Confirmation, the following terms have the following meanings:

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

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

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

- (a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;
- (b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the

CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

“FERC” means the Federal Energy Regulatory Commission.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

“FCR Contract Quantity” means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include “market participants” as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

“Hold-Back Capacity” is defined in Article 7 of this Confirmation.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1 of this Confirmation.

“MW” means megawatt.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Effective Date.

“Substitute Capacity” means “RA Substitute Capacity” as defined in the Tariff.

“System RAR” means the system resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

“Unit EFC” means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

“Unit NQC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

APPENDIX B
PRODUCT AND PRICE INFORMATION

Product means Capacity Attributes with the following characteristics.

Showing Month and Year	Path (North, South)	RAR Quantity (MW)	Capacity Area*	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	SCID of Benefitting LSE

* Please specify: System, Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura, or PG&E Other. PG&E Other means capacity coming from any combination of resources in the Humboldt, Sierra, Stockton, Fresno, Kern, and/or North Coast/North Bay Local Areas.

APPENDIX C
SUBSEQUENT SALE INFORMATION

Contract Key ID:	
Benefitting LSE SCID:	
Generic Volume (in MW):	
Local Volume (in MW and by local area):	
Flexible Volume (in MW):	
Term:	

APPENDIX D
NOTICE INFORMATION

Name: Silicon Valley Clean Energy Authority, a California joint powers authority

(“Party A”)
All Notices:

Delivery Address:
Street: 333 W. El Camino Real Suite 290
City: Sunnyvale State: CA Zip: 94087

Mail Address: (if different from above)

Attn: Girish Balachandran, CEO
(email) girish@svcleanenergy.org
Phone: 408 721-5301

Invoices and Payments:

Attn: SVCE Power Settlements
(email) SVCEpowersettlements@svcleanenergy.org
Phone: 408 721-5301

Scheduling:

Attn: Z-Global
(email) eric@zglobal.biz

Phone: (916) 221-4327

Wire Transfer:

BNK: River City Bank
ACCT Title: SVCE
ABA: [REDACTED]
ACCT: [REDACTED]
DUNS: [REDACTED]
Federal Tax ID Number: [REDACTED]

Credit and Collections:

Attn: SVCE Power Settlements
(email) SVCEpowersettlements@svcleanenergy.org

Contract Management

Attn: SVCE Power Settlements
(email) SVCEpowersettlements@svcleanenergy.org
Phone: 408 721-5301

With additional Notices of an Event of Default to Contract Manager:

Attn: Girish Balachandran, CEO
(email) girish@svcleanenergy.org
Phone: 408 721-5301
Attn: Steve Hall
(email) steve@hallenergylaw.com

Name: Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

(“Party B”)
All Notices:

Delivery Address:
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Candice Chan (candice.chan@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780

Invoices and Payments:

Attn: Fuel Settlements (egsettlements@pge.com)
Manager, Fuel Settlements
Phone: (415) 973-0795

Outages:

Attn: Outage Coordinator
(ESMOutageCoordinator@pge.com;
RATransactionNotificationList@pge.com)
Phone: (415) 973-1721

Wire Transfer:

BNK: The Bank of NY Mellon
ACC Title: PG&E
ABA: [REDACTED]
ACCT: [REDACTED]
DUNS: [REDACTED]
Federal Tax ID Number: [REDACTED]

Credit and Collections:

Attn: Credit Risk Management (PGERiskCredit@pge.com)
Phone: (415) 972-5188

Contract Management

Attn: Elizabeth Motley (elizabeth.motley@pge.com)
Contract Management
Phone: (415) 973-2368

With additional Notices of an Event of Default to Contract Manager:

Attn: Ted Yura (ted.yura@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660

Phone: (503) 477-9354

Supply Plan Contact: Mark Thomas
(email): mthomas@acespower.com
Phone: (317) 344-7136

Supply Plan and Hold-Back Request:
EPP-RAFilingsMailbox@pge.com

APPENDIX E
FORM OF LETTER OF CREDIT
Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [Insert issue date]

Beneficiary: [Insert Beneficiary name]
[Insert Beneficiary address]

Applicant: [Insert Applicant name]
[Insert Applicant address]

Letter of Credit Amount: [Insert amount]

Expiry Date: [Insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** (“Applicant”), we hereby issue in favor of **[Insert name of Beneficiary]** (the “Beneficiary”) our irrevocable standby letter of credit No. **[Insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents (which may be presented by physical delivery or by facsimile, e-mail or other electronic transmission):

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the “Draft Amount”) is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary’s counterparty under the RA Confirmation]** (“Counterparty”) under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert date of the Confirmation]** between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number];**” or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made by presentation of copies or original documents, or by facsimile, e-mail, or other electronic transmission of documents to [Insert fax number, email or other electronic transmission], Attention: [Insert name of bank's receiving department] or [Insert e-mail or other electronic transmission address]. If a demand is made by facsimile, e-mail or other electronic transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at [Insert phone number(s)] to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The electronic copy of this Letter of Credit shall be the operative instrument until such time as the original is received. This Letter of credit can be amended or terminated by facsimile, e-mail or other electronic transmission.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

[INSERT NAME OF ISSUING BANK]

By: _____

Name: **[Print or type name]**

Title: **[Print or type title]**

EXHIBIT A
SIGHT DRAFT

TO:
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S. \$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO.
[XXXXXX].

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER:

By: _____
Name: [Print or type name]
Title: [Print or type title]



**Import Capability Transfer Product
Confirmation Agreement Between
Powerex Corp. and Silicon Valley Clean Energy Authority
Powerex Deal No.: HKE908**

When fully executed, this confirmation agreement (“**Confirmation**”), dated October 22, 2020 (the “**Confirmation Effective Date**”), shall document the negotiated transaction (the “**Transaction**”) between Powerex Corp. (“**Seller**”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“**Buyer**”), together the “**Parties**”, in which Seller agrees to transfer the Product to the Buyer as specified herein. This Transaction is governed by the EEI Master Power Purchase and Sale Agreement dated as of November 28, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the “**Master Agreement**”) as amended and supplemented by this Confirmation under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts. This Agreement supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction. This Confirmation supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction.

1. Product

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Import Capability (the “**Product**”), at the Delivery Point in the amount of the Contract Quantity at the Contract Price for the Delivery Period. For the purposes of this Confirmation, “**Import Capability**” means a quantity of the Maximum Import Capability of an Intertie made available to a Scheduling Coordinator that is recognized by the CAISO for resource adequacy counting purposes.

2. Delivery Period and Term

- (a) Delivery Period. The Delivery Period is [REDACTED] inclusive, unless terminated earlier in accordance with the terms of this Confirmation.
- (b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

3. Contract Quantity

For the Delivery Period, Seller shall transfer the Product to Buyer in the amount as follows (the “**Contract Quantity**”):

Year	Month	Quantity (MW)
[REDACTED]		

Year	Month	Quantity (MW)

4. **Contract Price**

The Contract Price shall be [REDACTED]. The Parties hereby acknowledge and agree that the Product is being transferred from Seller to Buyer in connection with the Energy Confirmations (as defined in Article 9) and the Parties entering into such Transactions, together with the mutual promises and agreements set forth herein (and for other good and valuable consideration), shall constitute sufficient consideration for the transfer of Product from Seller to Buyer.

5. **Delivery Point**

The Delivery Point shall be the CAISO Branch Group MALIN500 (may also be referred to as PACI_MSL or MALIN500_ISL by CAISO).

6. **Transfer of Product and Registration**

Provided the condition precedent in Section 9 has been satisfied, no later than 5 pm on October 29, 2020, Seller will submit the transfer of the Contract Quantity of Import Capability for all months of the Delivery Period to Buyer using the CAISO's Customer Interface for Resource Adequacy ("CIRA") system. Buyer shall register the transfer from Seller of the Import Capability in the amount of the Contract Quantity at the Delivery Point with the CAISO as a transfer of Import Capability from one Market Participant to another, by completing any and all action or documentation required by the CAISO to effect such transfer (the "Registration"). The Registration shall be completed by Buyer as soon as reasonably practicable after Seller's submission of the transfer through CIRA (and, in any event, prior to the time that meets the requirements set out in the Tariff such that the Import Capability to be transferred to Buyer hereunder is included in Buyer's Resource Adequacy Plan).

Buyer's SCID for transfer of Import Capability is **LSVCE**.

In the event this Transaction becomes a Terminated Transaction or the Energy Confirmations are terminated in accordance with their terms, and Seller has transferred or initiated the transfer of Import Capability pursuant to this Section, Buyer shall transfer back to Seller any and all of the Contract Quantity of Import Capability for the remaining months of the Delivery Period that can, in accordance with the Tariff, be transferred back to Seller ("**Remaining Import Capability**") and Buyer and Seller agree to use a substantially similar transfer process as set forth in this Section, with Buyer submitting the transfer to Seller using CIRA on or before the date of termination (or, if Seller is Non-Defaulting Party, the later of such date or two (2) Business Days after receipt of Seller's notice specifying such date in accordance with the Master Agreement). If only one of the Energy Confirmations is terminated in accordance with its terms, the Remaining Import Capability shall be determined consistent with the terminated Energy Confirmation.

7. **[Intentionally Deleted]**

8. **Confidentiality**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Confirmation to the CPUC, CAISO and any Governmental Body, as required by Applicable Law; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such entity to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's performance and the transfer of the Product and the CAISO may publicly disclose the transfer of the Product from Seller to Buyer as indicated in the Tariff promptly following Seller's performance. In addition, in the event Buyer resells all or any portion

of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price.

9. **Condition Precedent**

This Confirmation (and the transaction confirmed thereby) shall not be binding upon any Party until and unless both Seller and Buyer have executed and delivered two Confirmations (as defined in the Master Agreement) each providing for the delivery of firm energy from large hydroelectric generating facilities in British Columbia that, in aggregate, have the same delivery period(s) and the same contract quantity(ies) of energy as the Delivery Period and Contract Quantity as set forth herein, in each case together with associated scheduling coordinator services, ("**Energy Confirmations**") before 3 p.m. Pacific Prevailing Time on October 28, 2020. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

By: 
Name: Mark Holman
 Managing Director
Title: _____
Date: 10/22/2020

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By: 
 5CA64B9AC4C24C3...
Name: Girish Balachandran
Title: CEO
Date: 10/22/2020

* Powerex Corp., doing business in California as Powerex Energy Corp.



CONFIRMATION BETWEEN

Powerex Corp. * and Silicon Valley Clean Energy Authority

Powerex Deal No. HKE906/HKE909/HKE914

This confirmation letter ("**Confirmation**") confirms the Transaction entered into on the Effective Date between Powerex Corp. ("**Seller**" or "**Powerex**") and Silicon Valley Clean Energy Authority, a California joint powers authority ("**Purchaser**" or "**SVCEA**") regarding the sale and purchase of firm energy from a specified source and provision of scheduling services in accordance with the terms and provisions of the EEI Master Power Purchase and Sale Agreement between the Parties dated November 28, 2016, together with any and all schedules, exhibits and supplements thereto or incorporated therein by reference (the "**Master Agreement**") under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions and confirmations between the Parties and the Master Agreement, form a single integrated agreement and are not separate contracts. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. Purchaser and Seller are each referred to as a "**Party**" and collectively, the "**Parties**".

Product 1 – Carbon Free Firm Energy

Seller: Powerex

Purchaser: SVCEA

Product 1: WSPP Agreement Schedule C Firm Energy supplied from the Carbon Free Source (as defined in Schedule "A") ("**Carbon Free Firm Energy**"). The Product cannot be curtailed by Seller or Purchaser for economic reasons.

Delivery Term: [REDACTED] inclusive.

Contract Quantity and Delivery Profile:

<u>Delivery Period</u>	<u>Delivery Point</u>	<u>Delivery Profile</u>	<u>Hourly Contract Quantity (MW)</u>
[REDACTED]			

<u>Delivery Period</u>	<u>Delivery Point</u>	<u>Delivery Profile</u>	<u>Hourly Contract Quantity (MW)</u>

MCC Bucket: MCC Bucket Category 1

Contract Price (Product 1):



Delivery Point: California Oregon Border (Malin500) ("COB"), north to south, as specified in the table above, which is an Intertie. The Parties may subsequently agree to an alternate delivery point in writing, *provided* a transmission path is specified to such other delivery point *and* such other delivery point is an Intertie.

Passage of Title: As set forth in Section 10.3 of the Master Agreement, title to the Carbon Free Firm Energy shall pass from Seller to Purchaser at the Delivery Point.

Transmission and Agreed Transmission Path:

Under this Confirmation and pursuant to Section 10 of the WSPP Agreement, the agreed transmission path for deliveries to the Delivery Point is the BC/US Border to John Day and John Day to COB (the "**Agreed Transmission Path**").

For the purposes of Section 10 of the WSPP Agreement, "firm transmission" means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a "continuous physical transmission path" which shall provide for "direct delivery of electricity" (as such terms are defined in the Cap and Trade Regulations).

Special Conditions – Product 1

1. **Generally Accepted Utility Practice.** All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.
2. **External Resource/Alternate Source.**
 - (a) Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.
 - (b) The large hydroelectric facilities comprising the Carbon Free Source are owned and operated by British Columbia Hydro and Power Authority ("BC Hydro"). BC Hydro remains responsible at all times for the physical operation of its system and makes all dispatch decisions with respect to generation from any particular generation resource(s). Purchaser acknowledges and agrees that this Confirmation does not constitute a right to call upon or request dispatch of any

particular hydroelectric facility comprising the Carbon Free Source, but rather constitutes a firm obligation of Seller to deliver Carbon Free Energy from one or more of the particular facilities comprising the Carbon Free Source, as dispatched by BC Hydro in its sole discretion, and subject at all times to such limitations and exceptions as expressly set forth herein.

- (c) In the event that unforeseen physical or operational limitations that are outside of the Seller's reasonable control limit the ability of Seller to deliver energy from the Carbon Free Source to the Delivery Point after a Supply Plan has been submitted with respect to Product 1 (including curtailments or de-rate of transmission service from the Carbon Free Source's host Balancing Authority Area or significant or wide-spread loss of generation within the host Balancing Authority Area), and, under the CAISO Tariff, CAISO requires delivery of energy from an alternate source, Purchaser agrees that Seller *may* deliver energy to Purchaser from one or more of an alternative group of resources located outside of the CAISO Balancing Authority Area. The Contract Price will be reduced by the Attributes Fee (as defined below) for any energy delivered from an alternate source pursuant to this paragraph.

3. **Product 1 Contract Price Components.** The Parties acknowledge that the Contract Price is a per megawatt hour aggregation of the following components:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller). All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

4. **Additional Seller Representations.** Seller represents and warrants to Purchaser as follows:

- (a) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;
- (b) as of the Reference Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source's host balancing authority area and is not committed to another balancing authority area;
- (c) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;

- (d) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Purchaser hereunder has been sold once and only once by Seller;
- (e) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission; and
- (f) throughout the Delivery Term, Seller's firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source's host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.

For greater certainty, Seller's performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

Product 2 – Scheduling Coordinator Services

Seller: Powerex

Purchaser: SVCEA

Product 2: Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Purchaser as Product 1.

Overview:

The purpose of Product 2 is for Powerex to perform the required scheduling coordinator functions for the "resource" (as such term is used by the CPUC in D. 20-06-028). CPUC D.20-06-028 permits the Purchaser to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Powerex is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and it has the requisite experience, skill and capability to perform the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Powerex will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities specified below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Purchaser's Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink.

Scheduling Coordinator Services:

Powerex agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy procured by Purchaser as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below ("**Scheduling Coordinator Services**"):

- (a) For each hour in which energy is to be delivered to the Delivery Point, Powerex will Bid or Self-Schedule (as such terms are defined in the CAISO Tariff) the Carbon Free Firm Energy into the CAISO Day Ahead Market and Real-Time Market, *provided* if Powerex submits Bid(s) (other than Self-Schedule) such Bid(s) shall be subject to the following requirement ("**Bidding Requirement**");

(i)



(ii) for each hour that is not an Availability Assessment Hour, Powerex's Bid(s) shall either be

A. [REDACTED]

B. [REDACTED]

(b) Working with CAISO and Purchaser to set up a Resource ID associated with Powerex's SCID for purposes of undertaking the services in paragraph **Error! Reference source not found.** above ("RA Resource ID"), which shall be set up as a CAISO system resource;

(c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;

(d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:

(i) Powerex's Scheduling Coordinator PSE in the "physical path" at and from the Delivery Point to the Sink,

(ii) Purchaser's PSE in the "market path" at the Delivery Point,

(iii) Purchaser's PSE as the last PSE in the "physical path",

(iv) RA Resource ID in the Misc(Token/Value) field in "physical path" at and from the Delivery Point to the Sink, and

(v) A CAISO Aggregated Pricing Node as the Sink; and

(e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Schedule "B" for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Schedule "B" due to changes in CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

Powerex's Scheduling Contacts:

	Phone	Fax
Prescheduler:	(604) 891-5007	(604) 891-5045
Real-Time:	(604) 891-5091	(604) 891-5045
Mid-office:	(604) 891-5057	(604) 891-5045

Purchaser's Identifiers

Purchaser's SCID: LSVCE

Purchaser's PSE: On or before December 28, 2020, Purchaser shall provide Seller with written notice setting out Purchaser's PSE.

Special Conditions – Product 2

5. **Resource Adequacy Plan.** Purchaser shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan ("**RA Plan**"), as required by the CAISO Tariff, that explicitly identifies the Delivery Profile hours as the temporal constraint/limitation (e.g. 24x7 (Flat), On-Peak, AAH etc.) and such RA Plan shall otherwise match the Supply Plan submitted by Powerex.
6. **CAISO Acceptance/Rejection.** Powerex, in providing the Scheduling Coordinator Services, shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Powerex. If, in any hour of the Delivery Term, CAISO rejects the Bid(s) (including Self-Schedule) submitted by Powerex in the CAISO Day Ahead Market and Real-Time Market, then
- (a) if Powerex Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that, pursuant to Section 10 of the WSPP Agreement, each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and
 - (b) if Powerex does not Bid in accordance with the Bidding Requirement and Powerex does not deliver the Carbon Free Firm Energy to the Delivery Point for that hour, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller and, unless Seller is otherwise excused from its delivery obligations, , no Capacity Fee shall be due for such hour (as provided in Section 3) and Purchaser shall be entitled to such other remedies as are provided hereunder and in the Master Agreement.
7. **Energy Adjustment.** For each month of the Delivery Term, and in consideration of Powerex retaining any and all revenues received as a result of any CAISO awards from the Bid(s) (including Self-Schedule(s)) submitted by Powerex (among other things), Powerex will credit Purchaser the Energy Adjustment. "Energy Adjustment" means the [REDACTED] or each MWh of the Carbon Free Firm Energy delivered to Purchaser in such month pursuant to this Confirmation.

Special Conditions – Product 1 and Product 2

8. **Definitions.** In this Confirmation:

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

"**AAH**" or "**Availability Assessment Hours**" means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Reference Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending ("**HE**") 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays.

"**Applicable Default Energy Bid**" means the Powerex Default Energy Bid *provided*, for any hours in which the Powerex Default Energy Bid is not (or is no longer) available from CAISO in a timely manner for any reason or CAISO's application of the relevant default energy bid formula is reasonably determined by Powerex to contain material errors or omissions, the Applicable Default Energy Bid for such hours shall be the ICE Day-Ahead

Mid-C Index, provided if the ICE Day-Ahead Mid-C Index is not known or published prior to the deadline for submitting Bids in the CAISO Day Ahead Market, Powerex may submit Bid(s) at a price that is less than or equal to its commercially reasonable best estimate of the expected ICE Day-Ahead Mid-C Index.

"Applicable Meter Data" means, for any hour that energy is delivered to Purchaser hereunder from a facility comprising the Carbon Free Source or an Alternate Source, the hourly meter data (or equivalent) representing generation at and supporting delivery from such facility. For greater certainty, Applicable Meter Data excludes meter data (or equivalent) from any facility for any hour that energy is not delivered from such facility. The foregoing does not preclude Seller from providing additional meter data (or equivalent) to Purchaser if requested by Purchaser, however Seller shall be under no obligation to obtain and provide such data to Purchaser.

"Buyer", as used in the Master Agreement, means Purchaser.

"Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively)

"CAISO Tariff" means the FERC-approved electric tariff of the California Independent System Operator Corporation ("**CAISO**") and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

"Change in Law" means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Reference Date.

"Effective Date" means the date on which both Parties have executed and delivered this Confirmation.

"Federal Holidays" means legal public holidays as set forth in 5 USC § 6103(a).

"Firm Transmission" means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

"Flat" means all Off-Peak and On-Peak hours (24x7).

"Generally Accepted Utility Practice" means a practice established by the Western Electricity Coordinating Council ("**WECC**") or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

"Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission ("**FERC**"), California Public Utilities Commission ("**CPUC**") and Canada Energy Regulator.

"ICE Day-Ahead Mid-C Index" means, for On-Peak Hours, the day-ahead Mid-C Peak Index and, for Off-Peak Hours, the day-ahead Mid-C Off-Peak Index, as published by ICE (Intercontinental Exchange, Inc.).

"LMP Index" means, for any day of delivery, the day-ahead hourly Locational Marginal Price ("**LMP**") at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for NP 15) ("**NP 15 Trading Hub**") for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

"MCC Bucket(s)" means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

"MCC Bucket Category 1" means, as provided in D. 20-06-031, Monday – Friday, four consecutive hours between 4 pm and 9 pm, and at least 40 hours per month from May - September.

"NERC Holiday" means any day designated as a holiday by NERC.

"Off-Peak" means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

"On-Peak" means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

"Powerex Default Energy Bid" means the default energy bid formula accepted and applied by CAISO for local market power mitigation of the Powerex Aggregate Participating Resource (APR) in the Western Energy Imbalance Market, being the aggregate residual capability from hydroelectric facilities that are capable of responding to intra-hour changes in generation, load and interchange which, as of the Reference Date, are the same hydroelectric facilities comprising the Carbon Free Source.

"RA Requirements" means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC's currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 20-06-031 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

"RA Termination Event" means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, *and* (ii) such unexcused failure by Seller is likely to cause Purchaser to not (or no longer) be able to count Product 1 toward its RA Requirements.

"**Reference Date**" means the date on which Seller has executed this Confirmation.

"**Scheduling Coordinator**" has the meaning given in the CAISO Tariff.

"**Sink**" means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

9. **Uncontrollable Force/Force Majeure.** The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPP Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:
- (a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Effective Date, will be considered Uncontrollable Force and Force Majeure,
 - (b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
 - (c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Powerex for any hour(s) of the Delivery Term, subject to Section 3, Powerex and Purchaser shall be relieved of their obligation to sell and deliver or purchase and receive, respectively, the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Powerex shall be relieved of its Scheduling Coordinator Services obligations for such hour(s), and
 - (d) Notwithstanding Section 10 of the WSPP Agreement or Section 3.3 of the Master Agreement, Powerex shall have no obligation to provide notice of Uncontrollable Force or Force Majeure to Purchaser in connection with any limitation, interruption or curtailment of transmission service described above as Purchaser will be included on all E-Tags. However, Powerex will use commercially reasonable efforts to communicate (verbally or electronically in writing) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Powerex is able to deliver to Purchaser during the affected hours.
10. **Verification/Monthly Reporting.**
- (a) The Powerex Default Energy Bid is consistently treated as confidential and commercially sensitive by Powerex, CAISO and CAISO Department of Market Monitoring ("DMM"), and Powerex shall not be required to provide the Powerex Default Energy Bid data to Purchaser (and Purchaser waives its right to obtain such data). In the event Purchaser reasonably disputes Powerex's compliance

with the Bidding Requirement, Purchaser may request, no more frequently than once every three months during the Delivery Term, one of the following:

- (i) that Powerex provide an attestation, in form and substance reasonably acceptable to both Parties, attesting that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement);
 - (ii) that Powerex engage and confidentially provide all relevant data and information to a qualified independent third party selected by Powerex (and reasonably acceptable to Purchaser) to produce a report confirming that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement), and Purchaser shall be entitled to receive a written copy of such independent third party's report provided that no confidential or commercially sensitive information of Powerex, CAISO, CAISO DMM or third parties will be disclosed therein or will be redacted therefrom; or
 - (iii) that Powerex provide such other form of verification as the Parties may agree.
- (b) If Purchaser is legally required or compelled to provide Powerex Default Energy Bid data to a Governmental Authority, Purchaser may request that Powerex provide the Powerex Default Energy Bid data directly to the Governmental Authority and Powerex will use commercially reasonable efforts to cooperate with Purchaser to accommodate Purchaser's request, provided Powerex shall not be required to make such disclosure unless Powerex, in its sole discretion, is satisfied (i) that Powerex is lawfully permitted to provide such data to the Governmental Authority in the circumstances and (ii) the confidentiality protections offered by such Governmental Authority are adequate and appropriate in light of the commercial sensitivity of the particular data requested.
- (c) In no circumstance will Powerex be required hereunder to disclose the energy bid formula underlying the Powerex Default Energy Bid to Purchaser, any other person or entity or any Governmental Authority.
- (d) The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (e.g. transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bidding Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Purchaser having delivery visibility through inclusion on all NERC E-Tags, Powerex will provide a monthly report identifying each hour that the full Hourly Contract Quantity was not delivered, as well as the reason for non-delivery. Powerex will use commercially reasonable efforts to provide the monthly report not later than fifteen (15) days after the end of each month of the Delivery Term.

11. **Electricity Importer.** As a result of the provision of Scheduling Coordinator Services, Powerex will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Powerex will be solely responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation, and will be responsible for any reporting requirements by an electricity importer (as defined in the Cap

and Trade Regulations) for such energy under the Cap and Trade Regulations. For greater certainty, Seller is not assuming or performing on behalf of Purchaser any reporting obligations Purchaser may have under the Cap and Trade Regulations.

12. **Confidentiality.** Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 13(b), provided such Party shall redact commercial terms (e.g. Contract Price) prior to disclosure or disclose the Confirmation confidentially to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. To the extent Applicable Meter Data is provided to Purchaser, the Applicable Meter Data may only be disclosed by Purchaser to an applicable Governmental Authority (or confidentially to a verifier or auditor engaged by Purchaser) if required or requested for the purposes of reporting and compliance with the Power Source Disclosure Regulations (California Code of Regulations, Title 20, Division 2, Chapter 3, Article 5) provided Purchaser shall use commercially reasonable efforts to obtain confidential treatment of such data to be disclosed to the Governmental Authority and otherwise such meter data must be held confidentially by Purchaser. To the extent meter data (or equivalent) other than Applicable Meter Data is provided to Purchaser by Seller, such meter data shall at all times be held confidentially by Purchaser and not disclosed except with the consent of Seller or as permitted under the Master Agreement.

Purchaser shall provide Seller with an annual report identifying those persons or Governmental Authorities to which it disclosed any meter data (or equivalent) provided by Seller hereunder.

13. **RA Requirements / Change in Law.**

- (a) The Parties acknowledge that Purchaser has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Purchaser acknowledges that Seller makes no representation or warranty that Product 1 as procured by Purchaser will be eligible for or can be used or counted toward Purchaser's resource adequacy obligations pursuant to the RA Requirements.
- (b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Purchaser's compliance filings to obtain the CPUC's guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Purchaser's name.
- (c) It is Purchaser's sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and (ii) categorize this Transaction into a MCC Bucket category. Seller shall have no liability to Purchaser in the event Purchaser incorrectly or improperly categorizes this Transaction into an MCC Bucket category in Purchaser's CPUC filings or submissions.
- (d) If there is a Change in Law that (i) materially adversely changes or affects a Party's obligations hereunder or (ii) results in Purchaser being unable to use Product 1 to meet its RA Requirements, the Parties shall attempt in good faith to revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Purchaser to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days following written notice from one Party to the other of the Change in Law ("**Negotiation**

Period"), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 16, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties *provided* that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

14. **Seller Indemnification / Termination.** To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Purchaser or other third party contracting directly or indirectly with Purchaser, then
- (a) Seller agrees to indemnify Purchaser for any monetary penalties directly resulting from Seller's nonperformance hereunder as assessed against Purchaser by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Purchaser following notice from Seller of its nonperformance; and
 - (b) in addition to Purchaser's other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Purchaser may terminate this Confirmation upon written notice to Seller, *provided* such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 16, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no event shall Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

15. **Purchaser Indemnification.** Purchaser agrees to indemnify Seller for any monetary penalties assessed against Seller by CAISO or the CPUC resulting from Purchaser's breach of Section 5.
16. **Survival Upon Early Termination.** To the extent this Confirmation is terminated by either Party as provided in Section 13(d) or 14(b) and Powerex, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Powerex incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For

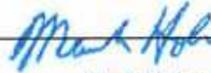
greater certainty, neither Party will make any further binding commitments to CAISO (e.g. no filing of monthly RA Plans or Supply Plans) after the effective date of termination.

- 17. **Relationship of the Parties.** The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.
- 18. **Condition Precedent.** This Confirmation (and the Transaction confirmed thereby) shall not be binding upon any Party until and unless both Powerex and SVCEA have executed and delivered this Confirmation to the other Party before 3:00 p.m. Pacific Prevailing Time on October 28, 2020. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the Transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

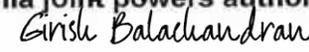
The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

By: 
 Name: Mark Holman
 Title: Managing Director
 Date: 10/22/2020

Silicon Valley Clean Energy Authority, a California joint powers authority

By: 
 Name: Girish Balachandran
 Title: CEO
 Date: 10/22/2020

* Powerex Corp., doing business in California as Powerex Energy Corp.

Schedule "A"

Carbon Free Source

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the "**Carbon Free Source**").

The NERC Source for the Carbon Free Source is BCH.AGC.HYDRO.

Facility and Unit Name	Location	CARB ID#
Bridge River 1 Hydroelectric Generation Facility (CAN)	British Columbia	501022
Bridge River 2 Hydroelectric Generation Facility (CAN)	British Columbia	501023
Cheakamus Hydroelectric Generation Facility (CAN)	British Columbia	501024
G.M. Shrum Hydroelectric Generation Facility (CAN)	British Columbia	501028
Kootenay Canal Hydroelectric Generation Facility (CAN)	British Columbia	501031
Mica Hydroelectric Generation Facility (CAN)	British Columbia	501035
Peace Canyon Hydroelectric Generation Facility (CAN)	British Columbia	501036
Revelstoke Hydroelectric Generation Facility (CAN)	British Columbia	501038
Seven Mile Hydroelectric Generation Facility (CAN)	British Columbia	501041

Schedule "B"

Sample NERC E-Tag

Market Path			
PSE	Product	Contract	Misc(Token/Value)
M1	BCPS01	G-F	
M2	PWX01		
M3	LSE		
M4	PWXSC		
M5	LSE		

Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc(Token/Value)
P1	BCHA		BCPS01(1)	BCH.AGC.HYDRO			
P2		BPAT	PWX01	BC.US.BORDER	JohnDay	BPAT	
P3		BPAT	PWX01	JohnDay	Malin500	BPAT	
P4		CISO	PWXSC	MALIN500	NP15	CISO	
P5	LCA		LSE	NP15			

Explanatory notes:

- Sample Tag based on delivery at COB (Malin500).
- M2-M3(PSE): Market path shows sale from Powerex (PWX01) to Purchaser (denoted as "LSE") at the Intertie (Malin500)
- M3-M4(PSE): Market path show Powerex (PWXSC) at the intertie (Malin500) assuming scheduling responsibility for the energy to NP15.
- P4(PSE): Powerex with scheduling responsibility is electricity importer per Cap and Trade Regulations; the Resource ID will be inserted in Misc(Token/Value) field.
- M5/P5 (PSE): Market path and physical path show a final delivery to the LSE to sink the energy at their load.



CONFIRMATION BETWEEN

Powerex Corp. * and Silicon Valley Clean Energy Authority

Powerex Deal No. HKH065/HKH070/HKH073

This confirmation letter ("**Confirmation**") confirms the Transaction entered into on the Effective Date between Powerex Corp. ("**Seller**" or "**Powerex**") and Silicon Valley Clean Energy Authority, a California joint powers authority ("**Purchaser**" or "**SVCEA**") regarding the sale and purchase of firm energy from a specified source and provision of scheduling services in accordance with the terms and provisions of the EEI Master Power Purchase and Sale Agreement between the Parties dated November 28, 2016, together with any and all schedules, exhibits and supplements thereto or incorporated therein by reference (the "**Master Agreement**") under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions and confirmations between the Parties and the Master Agreement, form a single integrated agreement and are not separate contracts. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. Purchaser and Seller are each referred to as a "**Party**" and collectively, the "**Parties**".

Product 1 – Carbon Free Firm Energy

Seller: Powerex

Purchaser: SVCEA

Product 1: WSPP Agreement Schedule C Firm Energy supplied from the Carbon Free Source (as defined in Schedule "A") ("**Carbon Free Firm Energy**"). The Product cannot be curtailed by Seller or Purchaser for economic reasons.

Delivery Term: [REDACTED] inclusive.

Contract Quantity and Delivery Profile:

<u>Delivery Period</u>	<u>Delivery Point</u>	<u>Delivery Profile</u>	<u>Hourly Contract Quantity (MW)</u>
[REDACTED]			

MCC Bucket: MCC Bucket Category 2

Contract Price (Product 1):

Delivery Point: California Oregon Border (Malin500) ("COB"), north to south, as specified in the table above, which is an Intertie. The Parties may subsequently agree to an alternate delivery point in writing, *provided* a transmission path is specified to such other delivery point *and* such other delivery point is an Intertie.

Passage of Title: As set forth in Section 10.3 of the Master Agreement, title to the Carbon Free Firm Energy shall pass from Seller to Purchaser at the Delivery Point.

Transmission and Agreed Transmission Path:

Under this Confirmation and pursuant to Section 10 of the WSPP Agreement, the agreed transmission path for deliveries to the Delivery Point is the BC/US Border to John Day and John Day to COB (the "**Agreed Transmission Path**").

For the purposes of Section 10 of the WSPP Agreement, "firm transmission" means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a "continuous physical transmission path" which shall provide for "direct delivery of electricity" (as such terms are defined in the Cap and Trade Regulations).

Special Conditions – Product 1

1. **Generally Accepted Utility Practice.** All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.
2. **External Resource/Alternate Source.**
 - (a) Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.
 - (b) The large hydroelectric facilities comprising the Carbon Free Source are owned and operated by British Columbia Hydro and Power Authority ("BC Hydro"). BC Hydro remains responsible at all times for the physical operation of its system and makes all dispatch decisions with respect to generation from any particular generation resource(s). Purchaser acknowledges and agrees that this Confirmation does not constitute a right to call upon or request dispatch of any particular hydroelectric facility comprising the Carbon Free Source, but rather constitutes a firm obligation of Seller to deliver Carbon Free Energy from one or more of the particular facilities comprising the Carbon Free Source, as dispatched by BC Hydro in its sole discretion, and subject at all times to such limitations and exceptions as expressly set forth herein.
 - (c) In the event that unforeseen physical or operational limitations that are outside of the Seller's reasonable control limit the ability of Seller to deliver energy from the Carbon Free Source to the Delivery Point after a Supply Plan has been submitted with respect to Product 1 (including curtailments or de-rate of transmission service from the Carbon Free Source's host Balancing Authority Area or significant or

wide-spread loss of generation within the host Balancing Authority Area), and, under the CAISO Tariff, CAISO requires delivery of energy from an alternate source, Purchaser agrees that Seller *may* deliver energy to Purchaser from one or more of an alternative group of resources located outside of the CAISO Balancing Authority Area. The Contract Price will be reduced by the Attributes Fee (as defined below) for any energy delivered from an alternate source pursuant to this paragraph.

3. **Product 1 Contract Price Components.** The Parties acknowledge that the Contract Price is a per megawatt hour aggregation of the following components:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller). All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

4. **Additional Seller Representations.** Seller represents and warrants to Purchaser as follows:

- (a) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;
- (b) as of the Reference Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source's host balancing authority area and is not committed to another balancing authority area;
- (c) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;
- (d) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Purchaser hereunder has been sold once and only once by Seller;
- (e) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission; and
- (f) throughout the Delivery Term, Seller's firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source's host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.

For greater certainty, Seller's performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

Product 2 – Scheduling Coordinator Services

Seller: Powerex

Purchaser: SVCEA

Product 2: Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Purchaser as Product 1.

Overview:

The purpose of Product 2 is for Powerex to perform the required scheduling coordinator functions for the "resource" (as such term is used by the CPUC in D. 20-06-028). CPUC D.20-06-028 permits the Purchaser to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Powerex is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and it has the requisite experience, skill and capability to perform the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Powerex will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities specified below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Purchaser's Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink.

Scheduling Coordinator Services:

Powerex agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy procured by Purchaser as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below ("**Scheduling Coordinator Services**"):

- (a) For each hour in which energy is to be delivered to the Delivery Point, Powerex will Bid or Self-Schedule (as such terms are defined in the CAISO Tariff) the Carbon Free Firm Energy into the CAISO Day Ahead Market and Real-Time Market, *provided* if Powerex submits Bid(s) (other than Self-Schedule) such Bid(s) shall be subject to the following requirement ("**Bidding Requirement**");
 - (i) 
 - (ii) for each hour that is not an Availability Assessment Hour, Powerex's Bid(s) shall either be
 - A. 
 - B. 
- (b) Working with CAISO and Purchaser to set up a Resource ID associated with Powerex's SCID for purposes of undertaking the services in paragraph **Error! Reference source not found.** above ("**RA Resource ID**"), which shall be set up as a CAISO system resource;

- (c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;
- (d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:
 - (i) Powerex's Scheduling Coordinator PSE in the "physical path" at and from the Delivery Point to the Sink,
 - (ii) Purchaser's PSE in the "market path" at the Delivery Point,
 - (iii) Purchaser's PSE as the last PSE in the "physical path",
 - (iv) RA Resource ID in the Misc(Token/Value) field in "physical path" at and from the Delivery Point to the Sink, and
 - (v) A CAISO Aggregated Pricing Node as the Sink; and
- (e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Schedule "B" for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Schedule "B" due to changes in CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

Powerex's Scheduling Contacts:

	Phone	Fax
Prescheduler:	(604) 891-5007	(604) 891-5045
Real-Time:	(604) 891-5091	(604) 891-5045
Mid-office:	(604) 891-5057	(604) 891-5045

Purchaser's Identifiers

Purchaser's SCID: LSVCE

Purchaser's PSE: On or before December 28, 2020, Purchaser shall provide Seller with written notice setting out Purchaser's PSE.

Special Conditions – Product 2

5. **Resource Adequacy Plan.** Purchaser shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan ("**RA Plan**"), as required by the CAISO Tariff, that explicitly identifies the Delivery Profile hours as the temporal constraint/limitation (e.g. 24x7 (Flat), On-Peak, AAH, etc.) and such RA Plan shall otherwise match the Supply Plan submitted by Powerex.
6. **CAISO Acceptance/Rejection.** Powerex, in providing the Scheduling Coordinator Services, shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Powerex. If, in any hour of the Delivery Term,

CAISO rejects the Bid(s) (including Self-Schedule) submitted by Powerex in the CAISO Day Ahead Market and Real-Time Market, then

- (a) if Powerex Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that, pursuant to Section 10 of the WSPP Agreement, each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and
 - (b) if Powerex does not Bid in accordance with the Bidding Requirement and Powerex does not deliver the Carbon Free Firm Energy to the Delivery Point for that hour, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller and, unless Seller is otherwise excused from its delivery obligations, no Capacity Fee shall be due for such hour (as provided in Section 3) and Purchaser shall be entitled to such other remedies as are provided hereunder and in the Master Agreement.
7. **Energy Adjustment.** For each month of the Delivery Term, and in consideration of Powerex retaining any and all revenues received as a result of any CAISO awards from the Bid(s) (including Self-Schedule(s)) submitted by Powerex (among other things), Powerex will credit Purchaser the Energy Adjustment. "Energy Adjustment" means the [REDACTED] of the Carbon Free Firm Energy delivered to Purchaser in such month pursuant to this Confirmation.

Special Conditions – Product 1 and Product 2

8. **Definitions.** In this Confirmation:

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

"8 Hour Select" means eight consecutive hours each day Monday through Friday, inclusive. The determination of the eight consecutive hours for any day of delivery shall be made by Seller, in its sole and absolute discretion, on a day-ahead and real time basis provided such period includes, at a minimum, hour ending ("HE") 1700 through HE 2100, inclusive.

"AAH" or "Availability Assessment Hours" means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Reference Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending ("HE") 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays.

"Applicable Default Energy Bid" means the Powerex Default Energy Bid provided, for any hours in which the Powerex Default Energy Bid is not (or is no longer) available from CAISO in a timely manner for any reason or CAISO's application of the relevant default energy bid formula is reasonably determined by Powerex to contain material errors or omissions, the Applicable Default Energy Bid for such hours shall be the ICE Day-Ahead Mid-C Index, provided if the ICE Day-Ahead Mid-C Index is not known or published prior to the deadline for submitting Bids in the CAISO Day Ahead Market, Powerex may submit Bid(s) at a price that is less than or equal to its commercially reasonable best estimate of the expected ICE Day-Ahead Mid-C Index.

"Applicable Meter Data" means, for any hour that energy is delivered to Purchaser hereunder from a facility comprising the Carbon Free Source or an Alternate Source, the hourly meter data (or equivalent) representing generation at and supporting delivery from such facility. For greater certainty, Applicable Meter Data excludes meter data (or equivalent) from any facility for any hour that energy is not delivered from such facility. The foregoing does not preclude Seller from providing additional meter data (or equivalent) to Purchaser if requested by Purchaser, however Seller shall be under no obligation to obtain and provide such data to Purchaser.

"Buyer", as used in the Master Agreement, means Purchaser.

"Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively)

"CAISO Tariff" means the FERC-approved electric tariff of the California Independent System Operator Corporation ("**CAISO**") and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

"Change in Law" means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Reference Date.

"Effective Date" means the date on which both Parties have executed and delivered this Confirmation.

"Federal Holidays" means legal public holidays as set forth in 5 USC § 6103(a).

"Firm Transmission" means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

"Flat" means all Off-Peak and On-Peak hours (24x7).

"Generally Accepted Utility Practice" means a practice established by the Western Electricity Coordinating Council ("**WECC**") or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

"Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission ("**FERC**"), California Public Utilities Commission ("**CPUC**") and Canada Energy Regulator.

"ICE Day-Ahead Mid-C Index" means, for On-Peak Hours, the day-ahead Mid-C Peak Index and, for Off-Peak Hours, the day-ahead Mid-C Off-Peak Index, as published by ICE (Intercontinental Exchange, Inc.).

"LMP Index" means, for any day of delivery, the day-ahead hourly Locational Marginal Price ("**LMP**") at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for

NP 15) ("**NP 15 Trading Hub**") for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

"**MCC Bucket(s)**" means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

"**MCC Bucket Category 2**" means, as provided in D. 20-06-031, every Monday – Friday, eight consecutive hours that includes 4 pm - 9 pm.

"**NERC Holiday**" means any day designated as a holiday by NERC.

"**Off-Peak**" means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

"**On-Peak**" means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

"**Powerex Default Energy Bid**" means the default energy bid formula accepted and applied by CAISO for local market power mitigation of the Powerex Aggregate Participating Resource (APR) in the Western Energy Imbalance Market, being the aggregate residual capability from hydroelectric facilities that are capable of responding to intra-hour changes in generation, load and interchange which, as of the Reference Date, are the same hydroelectric facilities comprising the Carbon Free Source.

"**RA Requirements**" means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC's currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 20-06-031 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

"**RA Termination Event**" means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, and (ii) such unexcused failure by Seller is likely to cause Purchaser to not (or no longer) be able to count Product 1 toward its RA Requirements.

"**Reference Date**" means the date on which Seller has executed this Confirmation.

"**Scheduling Coordinator**" has the meaning given in the CAISO Tariff.

"**Sink**" means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

9. **Uncontrollable Force/Force Majeure.** The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPP Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:

- (a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Effective Date, will be considered Uncontrollable Force and Force Majeure,
- (b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
- (c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Powerex for any hour(s) of the Delivery Term, subject to Section 3, Powerex and Purchaser shall be relieved of their obligation to sell and deliver or purchase and receive, respectively, the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Powerex shall be relieved of its Scheduling Coordinator Services obligations for such hour(s), and
- (d) Notwithstanding Section 10 of the WSPP Agreement or Section 3.3 of the Master Agreement, Powerex shall have no obligation to provide notice of Uncontrollable Force or Force Majeure to Purchaser in connection with any limitation, interruption or curtailment of transmission service described above as Purchaser will be included on all E-Tags. However, Powerex will use commercially reasonable efforts to communicate (verbally or electronically in writing) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Powerex is able to deliver to Purchaser during the affected hours.

10. **Verification/Monthly Reporting.**

- (a) The Powerex Default Energy Bid is consistently treated as confidential and commercially sensitive by Powerex, CAISO and CAISO Department of Market Monitoring ("DMM"), and Powerex shall not be required to provide the Powerex Default Energy Bid data to Purchaser (and Purchaser waives its right to obtain such data). In the event Purchaser reasonably disputes Powerex's compliance with the Bidding Requirement, Purchaser may request, no more frequently than once every three months during the Delivery Term, one of the following:
 - (i) that Powerex provide an attestation, in form and substance reasonably acceptable to both Parties, attesting that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement);

- (ii) that Powerex engage and confidentially provide all relevant data and information to a qualified independent third party selected by Powerex (and reasonably acceptable to Purchaser) to produce a report confirming that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement), and Purchaser shall be entitled to receive a written copy of such independent third party's report provided that no confidential or commercially sensitive information of Powerex, CAISO, CAISO DMM or third parties will be disclosed therein or will be redacted therefrom; or
 - (iii) that Powerex provide such other form of verification as the Parties may agree.
 - (b) If Purchaser is legally required or compelled to provide Powerex Default Energy Bid data to a Governmental Authority, Purchaser may request that Powerex provide the Powerex Default Energy Bid data directly to the Governmental Authority and Powerex will use commercially reasonable efforts to cooperate with Purchaser to accommodate Purchaser's request, *provided* Powerex shall not be required to make such disclosure unless Powerex, in its sole discretion, is satisfied (i) that Powerex is lawfully permitted to provide such data to the Governmental Authority in the circumstances and (ii) the confidentiality protections offered by such Governmental Authority are adequate and appropriate in light of the commercial sensitivity of the particular data requested.
 - (c) In no circumstance will Powerex be required hereunder to disclose the energy bid formula underlying the Powerex Default Energy Bid to Purchaser, any other person or entity or any Governmental Authority.
 - (d) The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (*e.g.* transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bidding Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Purchaser having delivery visibility through inclusion on all NERC E-Tags, Powerex will provide a monthly report identifying each hour that the full Hourly Contract Quantity was not delivered, as well as the reason for non-delivery. Powerex will use commercially reasonable efforts to provide the monthly report not later than fifteen (15) days after the end of each month of the Delivery Term.
11. **Electricity Importer.** As a result of the provision of Scheduling Coordinator Services, Powerex will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Powerex will be solely responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation, and will be responsible for any reporting requirements by an electricity importer (as defined in the Cap and Trade Regulations) for such energy under the Cap and Trade Regulations. For greater certainty, Seller is not assuming or performing on behalf of Purchaser any reporting obligations Purchaser may have under the Cap and Trade Regulations.
12. **Confidentiality.** Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 13(b), provided such Party shall redact commercial terms (*e.g.* Contract Price) prior to disclosure or disclose the Confirmation confidentially

to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. To the extent Applicable Meter Data is provided to Purchaser, the Applicable Meter Data may only be disclosed by Purchaser to an applicable Governmental Authority (or confidentially to a verifier or auditor engaged by Purchaser) if required or requested for the purposes of reporting and compliance with the Power Source Disclosure Regulations (California Code of Regulations, Title 20, Division 2, Chapter 3, Article 5) provided Purchaser shall use commercially reasonable efforts to obtain confidential treatment of such data to be disclosed to the Governmental Authority and otherwise such meter data must be held confidentially by Purchaser. To the extent meter data (or equivalent) other than Applicable Meter Data is provided to Purchaser by Seller, such meter data shall at all times be held confidentially by Purchaser and not disclosed except with the consent of Seller or as permitted under the Master Agreement.

Purchaser shall provide Seller with an annual report identifying those persons or Governmental Authorities to which it disclosed any meter data (or equivalent) provided by Seller hereunder.

13. **RA Requirements / Change in Law.**

- (a) The Parties acknowledge that Purchaser has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Purchaser acknowledges that Seller makes no representation or warranty that Product 1 as procured by Purchaser will be eligible for or can be used or counted toward Purchaser's resource adequacy obligations pursuant to the RA Requirements.
- (b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Purchaser's compliance filings to obtain the CPUC's guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Purchaser's name.
- (c) It is Purchaser's sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and(ii) categorize this Transaction into a MCC Bucket category. Seller shall have no liability to Purchaser in the event Purchaser incorrectly or improperly categorizes this Transaction into an MCC Bucket category in Purchaser's CPUC filings or submissions.
- (d) If there is a Change in Law that (i) materially adversely changes or affects a Party's obligations hereunder or (ii) results in Purchaser being unable to use Product 1 to meet its RA Requirements, the Parties shall attempt in good faith to revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Purchaser to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days following written notice from one Party to the other of the Change in Law ("**Negotiation Period**"), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 16, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other

transactions between the Parties provided that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

14. **Seller Indemnification / Termination**. To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Purchaser or other third party contracting directly or indirectly with Purchaser, then
- (a) Seller agrees to indemnify Purchaser for any monetary penalties directly resulting from Seller's nonperformance hereunder as assessed against Purchaser by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Purchaser following notice from Seller of its nonperformance; and
 - (b) in addition to Purchaser's other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Purchaser may terminate this Confirmation upon written notice to Seller, provided such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 16, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, provided for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no event shall Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

15. **Purchaser Indemnification**. Purchaser agrees to indemnify Seller for any monetary penalties assessed against Seller by CAISO or the CPUC resulting from Purchaser's breach of Section 5.
16. **Survival Upon Early Termination**. To the extent this Confirmation is terminated by either Party as provided in Section 13(d) or 14(b) and Powerex, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Powerex incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For greater certainty, neither Party will make any further binding commitments to CAISO (*e.g.* no filing of monthly RA Plans or Supply Plans) after the effective date of termination.
17. **Relationship of the Parties**. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.
18. **Condition Precedent**. This Confirmation (and the Transaction confirmed thereby) shall not be binding upon any Party until and unless both Powerex and SVCEA have executed

and delivered this Confirmation to the other Party before 3:00 p.m. Pacific Prevailing Time on October 28, 2020. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the Transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

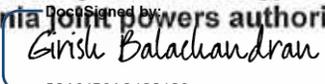
The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By: 

By: 
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Name: Mark Holman
Managing Director

Name: Girish Balachandran

Title: _____

Title: CEO

Date: 10/22/2020

Date: 10/22/2020

* Powerex Corp., doing business in California as Powerex Energy Corp.

Schedule "A"

Carbon Free Source

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the "**Carbon Free Source**").

The NERC Source for the Carbon Free Source is BCH.AGC.HYDRO.

Facility and Unit Name	Location	CARB ID#
Bridge River 1 Hydroelectric Generation Facility (CAN)	British Columbia	501022
Bridge River 2 Hydroelectric Generation Facility (CAN)	British Columbia	501023
Cheakamus Hydroelectric Generation Facility (CAN)	British Columbia	501024
G.M. Shrum Hydroelectric Generation Facility (CAN)	British Columbia	501028
Kootenay Canal Hydroelectric Generation Facility (CAN)	British Columbia	501031
Mica Hydroelectric Generation Facility (CAN)	British Columbia	501035
Peace Canyon Hydroelectric Generation Facility (CAN)	British Columbia	501036
Revelstoke Hydroelectric Generation Facility (CAN)	British Columbia	501038
Seven Mile Hydroelectric Generation Facility (CAN)	British Columbia	501041

Schedule "B"

Sample NERC E-Tag

Market Path			
PSE	Product	Contract	Misc(Token/Value)
M1	BCPS01	G-F	
M2	PWX01		
M3	LSE		
M4	PWXSC		
M5	LSE		

Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc(Token/Value)
P1	BCHA		BCPS01(1)	BCH.AGC.HYDRO			
P2		BPAT	PWX01	BC.US.BORDER	JohnDay	BPAT	
P3		BPAT	PWX01	JohnDay	Malin500	BPAT	
P4		CISO	PWXSC	MALIN500	NP15	CISO	
P5	LCA		LSE	NP15			

Explanatory notes:

- Sample Tag based on delivery at COB (Malin500).
- M2-M3(PSE): Market path shows sale from Powerex (PWX01) to Purchaser (denoted as "LSE") at the Intertie (Malin500)
- M3-M4(PSE): Market path show Powerex (PWXSC) at the intertie (Malin500) assuming scheduling responsibility for the energy to NP15.
- P4(PSE): Powerex with scheduling responsibility is electricity importer per Cap and Trade Regulations; the Resource ID will be inserted in Misc(Token/Value) field.
- M5/P5 (PSE): Market path and physical path show a final delivery to the LSE to sink the energy at their load.

Execution Version

**LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT**

Resource Adequacy Contract Number: SDGE_SVCE_SELL_Jun-Aug_2021_Sys

This confirmation letter (“Confirmation”) confirms the transaction (the “Transaction”) between San Diego Gas & Electric Company (“Party A” or “Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Party B” or “Buyer”), each individually a “Party” and together the “Parties”, dated as of October 16, 2020 (the “Confirmation Execution Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the “EEI Agreement”) with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the “Master Agreement”). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593
Attn: Contract Administration
Telephone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: [REDACTED]
Federal Tax ID Number: [REDACTED]

All Notices:

SILICON VALLEY CLEAN ENERGY
AUTHORITY
333 West El Camino Real, Suite 290
Sunnyvale, CA 94087
Attn: Girish Balachandran, CEO
Telephone: 408-721-5301
Facsimile: 408-721-5301
Duns: [REDACTED]
Federal Tax ID Number: [REDACTED]

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Invoices:

SILICON VALLEY CLEAN ENERGY
AUTHORITY
333 West El Camino Real, Suite 290
Sunnyvale, CA 94087
Attn: SVCE Power Settlements
Telephone: 408-721-5301
Facsimile: 408-721-5301

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Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Scheduling:

Attn: Z-Global
Email: eric@zglobal.biz
Day Ahead: (916) 221-4327
Real Time: (916) 221-4327

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Payments:

SILICON VALLEY CLEAN ENERGY
AUTHORITY
333 West El Camino Real, Suite 290
Sunnyvale, CA 94087
Attn: SVCE Power Settlements
Telephone: 408-721-5301
Facsimile: 408-721-5301

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: [REDACTED]
Payee: San Diego Gas & Electric
Company
Account Number: [REDACTED]
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316< bank name >

Wire Transfer:

Pay: River City Bank
Account No.: [REDACTED]
Fed. ABA No.: [REDACTED]
Confirmation: SVCE Power Settlements
Facsimile: 408-721-5301

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

Credit and Collections:

SILICON VALLEY CLEAN ENERGY
AUTHORITY
333 West El Camino Real, Suite 290
Sunnyvale, CA 94087
Attn: SVCE Power Settlements
Telephone: 408-721-5301
Facsimile: 408-721-5301

**With additional Notices of an Event of
Default or Potential Event of Default to:**

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

**With additional Notices of an Event of
Default or Potential Event of Default to:**

SILICON VALLEY CLEAN ENERGY
AUTHORITY
333 West El Camino Real, Suite 290
Sunnyvale, CA 94087
Attn: Girish Balachandran, CEO
Telephone: 408-721-5301
Facsimile: 408-721-5301

Execution Version

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

Article Two

Transaction Terms and Conditions

- Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

- Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 - Party A: N/A Cross Default Amount: N/A
 - Other Entity: N/A Cross Default Amount: N/A
- Cross Default for Party B:
 - Party B: N/A Cross Default Amount: N/A
 - Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
- Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

(d) Downgrade Event:

- Not Applicable
- Applicable

(e) Guarantor for Party B: N/A
Guarantee Amount: N/A

8.2 Party B Credit Protection

Execution Version

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____

- (b) Credit Assurances:
 - Not Applicable
 - Applicable

- (c) Collateral Threshold:
 - Not Applicable
 - Applicable
 - If applicable, complete the following:
 - Party A Collateral Threshold: \$ _____;
 - provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.
 - Party A Independent Amount: \$ _____
 - Party A Rounding Amount: \$ _____

- (d) Downgrade Event:
 - Not Applicable
 - Applicable
 - If applicable, complete the following:
 - It shall be a Downgrade Event for Party A if Party A 's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
 - Other: _____

- (e) Guarantor for Party A: N/A
 - Guarantee Amount: N/A

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

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Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.
2. Section 1.23 is amended by inserting the following before the period at the end of the second sentence: “, or (v) Buyer’s inability to use the Product purchased hereunder due to decertification of its CPUC implementation plan, or by cessation or termination of Buyer’s Joint Powers Agreement by any or all of its members”.
3. Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.
4. In Section 2.1, delete the first sentence in its entirety and replace with the following:

“A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a “Confirmation”).”
5. Section 2.3 is deleted in its entirety and replaced with the following:

“2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties.”
6. Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.
7. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.
8. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“10.6 THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE

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LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

9. Schedule M is amended, with respect to Party B, as follows:
- (a) Paragraph A is amended by deleting the term “Act” and replacing it with the following:

“Act” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).”
 - (b) Section 3.4 of Paragraph D is deleted in its entirety and replaced with the following:

“Party B’s Deliveries. Upon request, Party B shall provide to Party A copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and any Confirmations executed in connection therewith.”
 - (c) Paragraph G is deleted in its entirety and replaced with the following:

“NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.”
10. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff.

Execution Version

- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.12 [Reserved]
- 1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.
- 1.14 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.4.
- 1.16 “Contract Term” has the meaning set forth in Section 2.1.

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- 1.17 "CPUC" means the California Public Utilities Commission.
- 1.18 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 "CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program as provided in the CPUC Decisions.
- 1.20 "Credit Rating" means, with respect to any entity, the rating assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.
- 1.21 "Delivery Period" has the meaning specified in Section 3.3.
- 1.22 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 "Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 "Flexible RA Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.25 "Flexible RAR" means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum

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continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.

- 1.26 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 “GADS” means the Generating Availability Data System, or its successor.
- 1.28 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.29 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.33 “LSE” means load-serving entity.
- 1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.

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- 1.37 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.39 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.42 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.43 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.44 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.45 “Product” has the meaning specified in Section 3.1.
- 1.46 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.47 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.48 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.49 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.50 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.51 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

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- 1.52 "Replacement Capacity" means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.53 "Replacement Unit" means a generating unit providing Replacement Capacity.
- 1.54 "Resource Category" shall be as described in the CPUC Filing Guide.
- 1.55 "RMR Contract" has the meaning set forth in the Tariff.
- 1.56 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.57 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.
- 1.58 "Seller" has the meaning specified in the introductory paragraph.
- 1.59 "Showing Month" shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.60 "Substitution Rules" has the meaning set forth in Section 3.8(b).
- 1.61 "Supply Plan" has the meaning set forth in the Tariff.
- 1.62 "Tariff" means the tariff and protocol provisions, including any applicable CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.
- 1.63 "Transaction" has the meaning specified in the introductory paragraph.
- 1.64 "Unit" or "Units" shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.65 "Unit Contract Quantity" means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.66 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.
- 1.67 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

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- 1.68 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

2. **Term**

2.1 **Contract Term**

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

3. **Transaction**

3.1 **Product**

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes but excluding Flexible RA Attributes (if any)) [and Flexible RA Attributes) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

3.2 **Contingent Firm Quantity**

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Seller shall be excused from delivery of Product to the extent such portion of the Contract Quantity is not available due to a Planned Outage if Seller provides written notification to Buyer of such Planned Outage and Seller’s intent not to provide Replacement Capacity no later than twelve (12) days before the relevant deadline for the applicable Compliance Showing. Except for reasons of Planned Outage that meet the notice requirements of the preceding sentence or Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 11. Seller is obligated to meet the Tariff obligations with respect to Planned Outage approvals.

3.3 **Delivery Period**

The “Delivery Period” shall be June 1st, 2021 through August 31st, 2021, unless terminated earlier in accordance with the terms of this Agreement.

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3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes
* CAISO Resource ID should match a Unit described in Appendix A				

3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8; and
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

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3.7 Reserved3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.8.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product; provided, however, that any such resale does not increase Seller's obligations or liabilities under this Confirmation. Seller will, or will cause the Unit's SC, to follow Buyer's reasonable instructions with respect to providing such resold Product to a subsequent buyer ("Subsequent Buyer") provided that such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to: (a) execute such other documents that are necessary and reasonable to allow such Subsequent Buyer to use

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such resold Product as otherwise permitted by Buyer under this Confirmation, and (b) take such commercially reasonable actions that are no more onerous than the actions otherwise required of Seller and the Unit's SC hereunder to permit such Subsequent Buyer to use such resold Product as otherwise permitted by Buyer under this Confirmation.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity "B" exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity "B" be less than zero.

d = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

Contract Month	Capacity Price (\$/kW-day) 2021

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from

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and against all third-party claims brought against Buyer for Environmental Costs.

- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. **Seller's Failure to Deliver Contract Quantity**

5.1 Seller's Duty to Provide Replacement Capacity

Seller will be under no obligation to provide Replacement Capacity in the event of Force Majeure or Planned Outages that are timely noticed to Buyer in accordance with Section 3.2. If Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s); and

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- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 11.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity; and
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any

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penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder; or
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CASIO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

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- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO; and
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. **Confidentiality**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate

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Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

8. Entire Agreement: No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a written agreement signed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document signed by both Parties.

9. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10. Collateral Requirements

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

11. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller’s Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights

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and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

[Signature page follows]

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IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Execution Date.

SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers authority

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

DocuSigned by:
Girish Balachandran
By: 5CA64B9AC4C24C3...

DocuSigned by:
Ryan Miller
By: C298E2F675F4442

Name: Girish Balachandran

Name: Ryan Miller

Title: CEO

Title: Manager - Energy Supply & Dispatch

APPROVED as to legal form 

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APPENDIX A

Unit Information

Month	
Unit Resource Name	
CAISO Resource ID	
Unit SCID	
Unit NQC (MW)	
Prorated Percentage of Unit Factor	
Unit EFC (MW)	
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity	

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Attributes (excluding Flexible RA Attributes)				
Unit Contract Quantity (MW) for Flexible RA Attributes	N/A	N/A	N/A	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None	None	None	None
Run Hour Restrictions	None	None	None	None

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between City of San José, a California municipality (“Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of October 23, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 TRANSACTION TERMS

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.

- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3 **PAYMENTS**

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4

OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5

ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions

with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

The Parties acknowledge and agree that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

5.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

5.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.7 No Recourse to Members of Purchaser

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts,

obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation.

5.8 Designated Fund and Limited Obligations

- (a) Seller is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Seller has created and set aside a designated fund (the "Designated Fund") for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Seller agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Seller's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Seller shall provide Purchaser with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.
- (b) Limited Obligations. Seller's payment obligations under the Agreement are special limited obligations of the Seller payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

5.9 City of San José Standard Provisions

- (a) Nondiscrimination/Non-Preference. Purchaser shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Purchaser will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Purchaser from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Purchaser to file, and cause any Purchaser's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data

and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

- (b) Conflict of Interest. Purchaser represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Purchaser certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Purchaser shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Purchaser has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Seller in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Purchaser's violation of this subsection (b) is a material breach.
- (c) Environmentally Preferable Procurement Policy. Purchaser shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this subsection (c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Seller to terminate this Agreement.
- (d) Gifts Prohibited. Purchaser represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Purchaser shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Purchaser's violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Purchaser represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Purchaser shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

5.10 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

(b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

(d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

(e) In Section 22.3(f), delete the entire provision and replace it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

(f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

(g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.

(h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH

DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

5.11 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.12 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

**CITY OF SAN JOSÉ, a California
municipality**

DocuSigned by:
Girish Balachandran
By: _____
Name: Girish Balachandran
Title: CEO

DocuSigned by:
Jeanne M. Sote
By: _____
Name: Jeanne Sote
Title: Deputy Director of Power Resources

Approved as to form:

DocuSigned by:
Luisa Elkins
By: _____
Name: Luisa Elkins
Title: Senior Deputy City Attorney

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market,

authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“San José Clean Energy” means the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing Product (as defined under such confirmation) from Purchaser during the Delivery Period (as defined under such confirmation) of January 1, 2021 through June 30, 2021.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

- RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone:

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable):

Flexible Capacity Category (if applicable):

Delivery period: [REDACTED] inclusive.

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)
[REDACTED]		

Flexible Capacity, if applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)
[MM] [YY]	[XX]	

Unit 1

Unit Specific Information	
Resource Name	Los Medanos Energy Center
Physical Location	Pittsburg, CA
CAISO Resource ID	LMEC_1_PL1X3
SCID of Resource	CALJ
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	Combined-cycle Cogeneration
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	NA
TAC Area (e.g., PG&E, SCE)	PGE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

Unit 2

Unit Specific Information	
Resource Name	Gilroy Cogen
Physical Location	Gilroy, CA
CAISO Resource ID	GILROY_1_UNIT
SCID of Resource	CALJ
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas Combustion
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	NA
TAC Area (e.g., PG&E, SCE)	PGE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C
NOTICE INFORMATION**

Seller: City of San José	Purchaser: Silicon Valley Clean Energy Authority
All Notices: City of San José, a California municipality 200 E. Santa Clara Street, Tower 14 San José, CA 95113 Attn: Jeanne Solé Phone: 408-535-4867 Email: Jeanne.sole@sanjoseca.gov Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	All Notices: 333 West El Camino Real, Suite 290 Sunnyvale, CA 94087 Attn: Girish Balachandran, CEO Email: girish@svcleanenergy.org Phone: 408-721-5301 Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Sarah Sanchez Phone: 408-535-4865 Email: Invoices@sanjosecleanenergy.org	Invoices: Attn: SVCE Power Settlements Phone: 408-721-5301 Email: SVCEpowersettlements@svcleanenergy.org
Scheduling: Attn: NCPA Pre-Scheduling Desk Phone: 916-781-4227 or 916-781-4290 Email: Preschedulers@ncpa.com Alternative: Attn: NCPA Scheduling Coordination Des Phone: 916-781-4237 or 916-781-4280 Email: ScheduleCoordinators@ncpa.com	Scheduling: Attn: ZGlobal Phone: (916) 221-4327 E-mail: eric@zglobal.biz
Wire Transfer: BNK: Wells Fargo Bank ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: River City Ban■ ACCT: [REDACTED] ABA: [REDACTED]
Credit and Collections: Attn: Sarah Sanchez Phone: 408-535-4865 Email: sarah.sanchez@sanjoseca.gov	Credit and Collections: Attn: SVCE Power Settlements Phone: 408-721-5301 Email: SVCEpowersettlements@svcleanenergy.org
Defaults: City Attorney's Office Attn. Deputy City Attorney – Community Energy department Office of the City Attorney 200 East Santa Clara Street, 16th Floor San José, CA 95113-1905 Phone: (408) 535-1900 Email: cao.main@sanjoseca.gov	Defaults: Attn: Girish Balachandran, CEO Email: girish@svcleanenergy.org Phone: 408-721-5301

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority (“Seller”) and City of San José, a California municipality (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of October 23, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 TRANSACTION TERMS

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.

- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3 **PAYMENTS**

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5

ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions

with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

The Parties acknowledge and agree that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

5.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

5.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.7 No Recourse to Members of Seller

Seller is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Seller will solely be responsible for all debts, obligations

and liabilities accruing and arising out of this Confirmation. Purchaser will have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Seller's constituent members, in connection with this Confirmation.

5.8 Designated Fund and Limited Obligations

- (a) Purchaser is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Purchaser has created and set aside a designated fund (the "Designated Fund") for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Purchaser agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Purchaser's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Purchaser shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.
- (b) Limited Obligations. Purchaser's payment obligations under the Agreement are special limited obligations of the Purchaser payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

5.9 City of San José Standard Provisions

- (a) Nondiscrimination/Non-Preference. Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

- (b) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Seller has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Purchaser in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (b) is a material breach.
- (c) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this subsection (c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Purchaser to terminate this Agreement.
- (d) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

5.10 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

- (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:
- “If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”
- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A

DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.

- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

5.11 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.12 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

DocuSigned by:

By: _____
Name: Girish Balachandran
Title: CEO

**CITY OF SAN JOSÉ, a California
municipality**

DocuSigned by:

By: _____
Name: Jeanne Sole
Title: Deputy Director of Power Resources

Approved as to form:

DocuSigned by:

By: _____
Name: Luisa Etkins
Title: Senior Deputy City Attorney

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market,

authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“San José Clean Energy” means the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing Product (as defined under such confirmation) from Purchaser during the Delivery Period (as defined under such confirmation) of January 1, 2021 through June 30, 2021.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone:

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable):

Flexible Capacity Category (if applicable): Flex 1

Delivery period: [REDACTED], inclusive.

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)*

Flexible Capacity, if applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)*

*The Contract Price per kW-month is for both RAR and Flexible Capacity Attributes.

Unit 1

Unit Specific Information	
Resource Name	Colusa Generating Station
Physical Location	Stonyford, CA
CAISO Resource ID	COLUSA_2_PL1X3
SCID of Resource	PCG2
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	Combined-cycle Cogeneration
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	Flex 1
TAC Area (e.g., PG&E, SCE)	PGE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

Unit 2

Unit Specific Information	
Resource Name	Panoche Energy Center (Aggregated)
Physical Location	Firebaugh, CA
CAISO Resource ID	PNCHEG_2_PL1X4
SCID of Resource	PCG5
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	Flex 1
TAC Area (e.g., PG&E, SCE)	PGE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

Unit 3

Unit Specific Information	
Resource Name	Pit Power House 7 Unit 2
Physical Location	Shasta County
CAISO Resource ID	PIT7_7_UNIT 2
SCID of Resource	PCG2
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	Hydro
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	Flex 1
TAC Area (e.g., PG&E, SCE)	PGE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C
NOTICE INFORMATION**

Seller: Silicon Valley Clean Energy Authority	Purchaser: City of San José
All Notices: 333 West El Camino Real, Suite 290 Sunnyvale, CA 94087 Attn: Girish Balachandran, CEO Email: girish@svcleanenergy.org Phone: 408-721-5301 Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	All Notices: City of San José, a California municipality 200 E. Santa Clara Street, Tower 14 San José, CA 95113 Attn: Jeanne Solé Phone: 408-535-4867 Email: Jeanne.sole@sanjoseca.gov Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: SVCE Power Settlements Phone: 408-721-5301 Email: SVCEpowersettlements@svcleanenergy.org	Invoices: Attn: Sarah Sanchez Phone: 408-535-4865 Email: Invoices@sanjosecleanenergy.org
Scheduling: Attn: ZGlobal Phone: (916) 221-4327 E-mail: eric@zglobal.biz	Scheduling: Attn: NCPA Pre-Scheduling Desk Phone: 916-781-4227 or 916-781-4290 Email: Preschedulers@ncpa.com Alternative: Attn: NCPA Scheduling Coordination Des Phone: 916-781-4237 or 916-781-4280 Email: ScheduleCoordinators@ncpa.com
Wire Transfer: BNK: River City Bank ACCT: [REDACTED] ABA: [REDACTED]	Wire Transfer: BNK: Wells Fargo Bank ABA: [REDACTED] ACCT: [REDACTED]
Credit and Collections: Attn: SVCE Power Settlements Phone: 408-721-5301 Email: SVCEpowersettlements@svcleanenergy.org	Credit and Collections: Attn: Sarah Sanchez Phone: 408-535-4865 Email: sarah.sanchez@sanjoseca.gov
Defaults: Attn: Girish Balachandran, CEO Email: girish@svcleanenergy.org Phone: 408-721-5301	Defaults: City Attorney's Office Attn. Deputy City Attorney – Community Energy department Office of the City Attorney 200 East Santa Clara Street, 16th Floor San José, CA 95113-1905 Phone: (408) 535-1900 Email: cao.main@sanjoseca.gov

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

CCA WSPP Standard RA Confirmation
30 September 2020

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **Peninsula Clean Energy Authority**, a California joint powers authority (“Seller”) and **Silicon Valley Clean Energy Authority** (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of **October 26, 2020** (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

**CCA WSPP Standard RA Confirmation
30 September 2020**

**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

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Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines

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or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3
PAYMENTS

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity

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Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

**ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS**

4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all,

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obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to

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promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

**ARTICLE 5
HOLDBACK AND SUBSTITUTE CAPACITY**

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser's request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Purchaser's request under this Article Five.

**ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS**

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and

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include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

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

- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the

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Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Seller or Purchaser

Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of

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Seller constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Sellers's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:
 - “If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”
- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

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- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH,

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AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section:
“On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,²]

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or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**PENINSULA CLEAN ENERGY
AUTHORITY**, a California joint powers
authority

DocuSigned by:
Janis C. Pepper
By: AF3E8A7990AD404...

Name: Janis C. Pepper

Title: CEO

**SILICON VALLEY CLEAN ENERGY
AUTHORITY**, a California joint powers
authority

DocuSigned by:
Girish Balachandran
By: 5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is ten (10) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

- RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: North

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): Fresno, Stockton

Flexible Capacity Category (if applicable): 1

Delivery period: [REDACTED], inclusive.

Contract Quantity and Contract Price:

Showing Month and Year	RAR Quantity (MW)	Capacity Area	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	Resource ID	Resource Category (1, 2, 3, or 4)
[REDACTED]							

**APPENDIX C
NOTICE INFORMATION**

<p>Seller: Peninsula Clean Energy Authority</p>	<p>Purchaser: Silicon Valley Clean Energy Authority</p>
<p>All Notices:</p> <p>Attn: Director of Power Resources Phone: 650-260-0005 Email: contracts@peninsulacleanenergy.com Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>All Notices:</p> <p>Attn: Girish Balachandran, CEO Phone: 408 721-5301 Facsimile: N/A Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p>Invoices:</p> <p>Attn: Director of Finance Email: finance@peninsulacleanenergy.com; contracts@peninsulacleanenergy.com Phone: (650) 260-0005</p>	<p>Invoices:</p> <p>Attn: SVCE Power Settlements Phone: 408 721-5301 Facsimile: E-mail:</p>
<p>Scheduling:</p> <p>Attn: Director of Power Resources Email: contracts@peninsulacleanenergy.com Phone: (650) 260-0005</p>	<p>Scheduling:</p> <p>Attn: Z-Global Tel: (916) 221-4327 Email: eric@zglobal.biz</p>
<p>Wire Transfer:</p> <p>BNK: First Republic Bank ABA: [REDACTED] ACCT: [REDACTED]</p>	<p>Wire Transfer:</p> <p>BNK: River City Bank ABA: [REDACTED] ACCT: [REDACTED]</p>
<p>Credit and Collections:</p> <p>Attn: Director of Finance Email: finance@peninsulacleanenergy.com Phone: (650) 260-0005</p>	<p>Credit and Collections:</p> <p>Attn: SVCE Power Settlements Phone: 408 721-5301 Facsimile: N/A E-mail: SVCEpowersettlements@svcleanenergy.org</p>
<p>Defaults:</p> <p>Attn: Janis Pepper, CEO Phone: (650) 260-0100 Email: jpepper@peninsulacleanenergy.com Address: 2075 Woodside Road, Redwood City, CA 94061</p>	<p>Defaults:</p> <p>Attn: Girish Balachandran, CEO Phone: 408 721-5301 Facsimile: N/A E-mail: girish@svcleanenergy.org Attn: Steve Hall (email) steve@hallenergylaw.com</p>
	<p>Supply Plan Contact: Mark Thomas E-mail: mthomas@acespower.com Phone: (317) 344-7136</p>

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

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204RA202

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **Peninsula Clean Energy Authority**, a California joint powers authority (“**Seller**”) and **Silicon Valley Clean Energy Authority** (“**Purchaser**”), and each individually a “**Party**” and together the “**Parties**”, dated as of **October 23, 2020** (the “**Effective Date**”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “**Transaction**”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “**WSPP Agreement**”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “**Agreement**” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 TRANSACTION TERMS

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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ARTICLE 2

DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

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Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 **Reductions in Contract Quantity**

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.

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- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

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ARTICLE 3
PAYMENTS**3.1 Payment**

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

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notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4

OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

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- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
HOLDBACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser's request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Purchaser's request under this Article Five.

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ARTICLE 6

ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure

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pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

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6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Seller or Purchaser

Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Sellers's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:

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“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

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“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section:
“On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)(the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v.*

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Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,²] or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

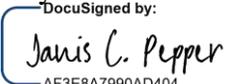
6.10 Entire Agreement: No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**PENINSULA CLEAN ENERGY
AUTHORITY**, a California joint powers
authority

By:  DocuSigned by:
AF3E8A7990AD404...

Name: Janis C. Pepper

Title: CEO

**SILICON VALLEY CLEAN ENERGY
AUTHORITY**, a California joint powers
authority

By:  DocuSigned by:
5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing various MWs of Product for February 2021 – May 2021, and October 2021-November 2021 defined as System RA *with flexible attributes* from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

- RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: North

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable):

Flexible Capacity Category (if applicable): N/A

Delivery period: [REDACTED] through [REDACTED] inclusive.

Contract Quantity and Contract Price:

Showing Month and Year	System RAR Quantity (MW)	Capacity Area	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	Resource ID	Resource Category (1, 2, 3, or 4)
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[REDACTED]							
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**APPENDIX C
NOTICE INFORMATION**

Seller: Peninsula Clean Energy Authority	Purchaser: Silicon Valley Clean Energy Authority
All Notices: Attn: Director of Power Resources Phone: 650-260-0005 Email: contracts@peninsulacleanenergy.com Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:
Invoices: Attn: Director of Finance Email: finance@peninsulacleanenergy.com ; contracts@peninsulacleanenergy.com Phone: (650) 260-0005	Invoices: Attn: Phone: Facsimile: E-mail:
Scheduling: Attn: Director of Power Resources Email: contracts@peninsulacleanenergy.com Phone: (650) 260-0005	Scheduling: Attn: Tel: (DA CAISO Desk) Tel: (Real Time Desk) Email:
Wire Transfer: BNK: First Republic Bank ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: ABA: ACCT:
Credit and Collections: Attn: Director of Finance Email: finance@peninsulacleanenergy.com Phone: (650) 260-0005	Credit and Collections: Attn: Phone: Facsimile: E-mail:
Defaults: Attn: Janis Pepper, CEO Phone: (650) 260-0100 Email: jpepper@peninsulacleanenergy.com Address: 2075 Woodside Road, Redwood City, CA 94061	Defaults: Attn: Phone: Facsimile: E-mail: Address:

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **Silicon Valley Clean Energy Authority** (“Seller”) and **Peninsula Clean Energy Authority**, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of **October 23, 2020** (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 **TRANSACTION TERMS**

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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ARTICLE 2

DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

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Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.

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- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

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ARTICLE 3
PAYMENTS**3.1 Payment**

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

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notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

**ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS**

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

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- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

**ARTICLE 5
HOLDBACK AND SUBSTITUTE CAPACITY**

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser's request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Purchaser's request under this Article Five.

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ARTICLE 6

ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure

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pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

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6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Seller or Purchaser

Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Sellers's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:

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“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

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“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section:
“On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v.*

CCA WSPP Standard RA Confirmation
30 September 2020

(Swap Provision: PCE swap System w/o flex)

Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,²] or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**PENINSULA CLEAN ENERGY
AUTHORITY**, a California joint powers
authority

Signed by:
By: Janis C. Pepper
AF3E8A7990AD404...

Name: Janis C. Pepper

Title: CEO

**SILICON VALLY CLEAN ENERGY
AUTHORITY**, a California joint powers
authority

Signed by:
By: Girish Balachandran
5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing various MWs of Product for February 2021 – May 2021, and October 2021-November 2021 defined as System RA *with no flexible attributes* from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

- RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: North

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): System

Flexible Capacity Category (if applicable): N/A

Delivery period: [redacted] **through**
[redacted], **inclusive.**

Contract Quantity and Contract Price:

Showing Month and Year	System RAR Quantity (MW)	Capacity Area	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	Resource ID	Resource Category (1, 2, 3, or 4)
[redacted]							

**APPENDIX C
NOTICE INFORMATION**

Purchaser: Peninsula Clean Energy Authority	Seller:
All Notices: Attn: Director of Power Resources Phone: 650-260-0005 Email: contracts@peninsulacleanenergy.com Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:
Invoices: Attn: Director of Finance Email: finance@peninsulacleanenergy.com ; contracts@peninsulacleanenergy.com Phone: (650) 260-0005	Invoices: Attn: Phone: Facsimile: E-mail:
Scheduling: Attn: Director of Power Resources Email: contracts@peninsulacleanenergy.com Phone: (650) 260-0005	Scheduling: Attn: Tel: (DA CAISO Desk) Tel: (Real Time Desk) Email:
Wire Transfer: BNK: First Republic Bank ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: ABA: ACCT:
Credit and Collections: Attn: Director of Finance Email: finance@peninsulacleanenergy.com Phone: (650) 260-0005	Credit and Collections: Attn: Phone: Facsimile: E-mail:
Defaults: Attn: Janis Pepper, CEO Phone: (650) 260-0100 Email: jpepper@peninsulacleanenergy.com Address: 2075 Woodside Road, Redwood City, CA 94061	Defaults: Attn: Phone: Facsimile: E-mail: Address:

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **East Bay Community Energy Authority**, a California joint powers authority (“Seller”) and **Silicon Valley Clean Energy Authority** (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of October 26, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 **TRANSACTION TERMS**

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.

- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3 **PAYMENTS**

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5 HOLDBACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser's request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Purchaser's request under this Article Five.

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure

pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Seller or Purchaser

Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Sellers's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section:
“On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v.*

Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,²] or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

East Bay Community Energy Authority,
a California joint powers authority

By: DocuSigned by:
Howard Chang
919B64EE6470428

Name: Howard Chang

Title: COO

10/30/2020

**SILICON VALLY CLEAN ENERGY
AUTHORITY,** a California joint powers
authority

By: DocuSigned by:
Girish Balachandran
5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing various MWs of Product for February 2021 – April 2021, and November 2021 defined as System RA *with flexible attributes* from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

- RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: North

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable):

Flexible Capacity Category (if applicable): N/A

Delivery period: [REDACTED], inclusive.

Contract Quantity and Contract Price:

Showing Month and Year	System RAR Quantity (MW)	Capacity Area	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	Resource ID	Resource Category (1, 2, 3, or 4)
[REDACTED]							

**APPENDIX C
NOTICE INFORMATION**

<p>Seller: Peninsula Clean Energy Authority</p>	<p>Purchaser: Silicon Valley Clean Energy Authority</p>
<p>All Notices:</p> <p>1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org and legal@ebce.org Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>All Notices:</p> <p>Attn: Phone: Facsimile: Duns: Federal Tax ID Number:</p>
<p>Invoices:</p> <p>Attn: Jim Dorrance, Power Resources Associate Phone: (510) 827-2051 E-mail: ap@ebce.org and powerresources@ebce.org</p>	<p>Invoices:</p> <p>Attn: Phone: Facsimile: E-mail:</p>
<p>Scheduling:</p> <p>Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 E-mail: ken.goeke@ncpa.com</p>	<p>Scheduling:</p> <p>Attn: Tel: (DA CAISO Desk) Tel: (Real Time Desk) Email:</p>
<p>Wire Transfer:</p> <p>BNK: River City Bank ABA: [REDACTED] ACCT: [REDACTED]</p>	<p>Wire Transfer:</p> <p>BNK: ABA: ACCT:</p>
<p>Credit and Collections:</p> <p>Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 E-mail: hchang@ebce.org</p>	<p>Credit and Collections:</p> <p>Attn: Phone: Facsimile: E-mail:</p>
<p>Defaults:</p> <p>1999 Harrison Street, Suite 800 Oakland, CA 94612 Phone: (510) 809-7458 Email: hchang@ebce.org and legal@ebce.org</p> <p>With a copy to:</p> <p>General Counsel 1999 Harrison Street, Suite 800 Oakland, CA 94612 Email: legal@ebce.org</p>	<p>Defaults:</p> <p>Attn: Phone: Facsimile: E-mail: Address:</p>

<p>With an additional copy to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com</p>	
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**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **Silicon Valley Clean Energy Authority** (“Seller”) and **East Bay Community Energy Authority**, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of October 26, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 TRANSACTION TERMS

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.

- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3 **PAYMENTS**

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4

OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5 HOLDBACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser's request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Purchaser's request under this Article Five.

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure

pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Seller or Purchaser

Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Sellers's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section:
“On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v.*

Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,²] or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

East Bay Community Energy Authority,
a California joint powers authority

DocuSigned by:
Howard Chang
By: 919864FF6470428...
Name: Howard Chang
Title: COO
10/30/2020

**SILICON VALLY CLEAN ENERGY
AUTHORITY,** a California joint powers
authority

DocuSigned by:
Girish Balachandran
By: 5CA64B9AC4C24C3...
Name: Girish Balachandran
Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing various MWs of Product for February 2021 – April 2021, and November 2021 defined as System RA *with no flexible attributes* from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: North

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): System

Flexible Capacity Category (if applicable): N/A

Delivery period: [REDACTED]
[REDACTED], inclusive.

Contract Quantity and Contract Price:

Showing Month and Year	System RAR Quantity (MW)	Capacity Area	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-month)	Resource ID	Resource Category (1, 2, 3, or 4)
[REDACTED]							

**APPENDIX C
NOTICE INFORMATION**

Purchaser: East Bay Community Energy Authority	Seller: Silicon Valley Clean Energy Authority
All Notices: 1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org and legal@ebce.org Duns: ██████████ Federal Tax ID Number: ██████████	All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:
Invoices: Attn: Jim Dorrance, Power Resources Associate Phone: (510) 827-2051 E-mail: ap@ebce.org and powerresources@ebce.org	Invoices: Attn: Phone: Facsimile: E-mail:
Scheduling: Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 E-mail: ken.goeke@ncpa.com	Scheduling: Attn: Tel: (DA CAISO Desk) Tel: (Real Time Desk) Email:
Wire Transfer: BNK: River City Bank ABA: ██████████ ACCT: ██████████	Wire Transfer: BNK: ABA: ACCT:
Credit and Collections: Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 E-mail: hchang@ebce.org	Credit and Collections: Attn: Phone: Facsimile: E-mail:
Defaults: 1999 Harrison Street, Suite 800 Oakland, CA 94612 Phone: (510) 809-7458 Email: hchang@ebce.org and legal@ebce.org With a copy to: General Counsel	Defaults: Attn: Phone: Facsimile: E-mail: Address:

1999 Harrison Street, Suite 800
Oakland, CA 94612
Email: legal@ebce.org

With an additional copy to:
Hall Energy Law PC
Attn: Stephen Hall
Phone: (503) 313-0755
Email: steve@hallenergylaw.com

**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

**CCA WSPP Standard RA Confirmation
(Includes Swap Provisions)
30 September 2020**

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Central Coast Community Energy, a California joint powers authority (“Seller”) and Silicon Valley Clean Energy, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of October 16, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

**ARTICLE 1
TRANSACTION TERMS**

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility.¹ A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's

¹ Note to draft: Seller to revise as appropriate.

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Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.²

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap

² For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to

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Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser’s Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller’s obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit’s SC, to follow Purchaser’s instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller shall, and shall cause the Shown Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser’s rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit’s SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit’s SC shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.

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ARTICLE 3
PAYMENTS

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

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notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

**ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS**

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

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- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
HOLDBACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser's request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Purchaser's request under this Article Five.

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ARTICLE 6

ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure

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pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

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6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Purchaser

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

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:

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“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

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“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section:
“On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v.*

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Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

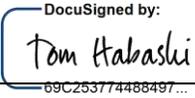
6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

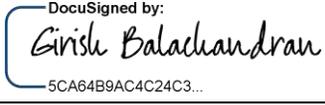
**Central Coast Community Energy, a
California joint powers authority**

By:  DocuSigned by:
09C253774488497...

Name: Tom Habashi

Title: CEO

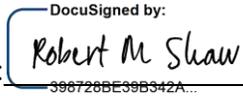
**Silicon Valley Clean Energy, a
California joint powers authority**

By:  DocuSigned by:
5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

Approved as to Form:

By:  DocuSigned by:
3967265E395342A...

Print: Robert M Shaw

Title: COO and General Counsel

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing 19MW of Product (as defined under such confirmation) from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.³

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

³ Note to draft: Parties to revise as appropriate.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: SCE

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): LA Basin

Flexible Capacity Category (if applicable): 1

Delivery period:

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)

Flexible Capacity, if applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)

Unit 1

Unit Specific Information			
Resource Name	REDONDO GEN STA. UNIT 5	REDONDO GEN STA. UNIT 5	REDONDO GEN STA. UNIT 5
Physical Location	Redondo Beach, CA	Redondo Beach, CA	Redondo Beach, CA
CAISO Resource ID	REDOND_7_UNIT 5	REDOND_7_UNIT 5	REDOND_7_UNIT 5
SCID of Resource	EDFR	EDFR	EDFR
Unit NQC by month (e.g., Jan=50, Feb=65):	178.87	175	495.9
Unit EFC by month (e.g., Jan=30, Feb=50)	168.87	165	365.9
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas Steam	Natural Gas Steam	Natural Gas Steam
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1	1	1
TAC Area (e.g., PG&E, SCE)	SCE	SCE	SCE
Prorated Percentage of Unit Factor			
Prorated Percentage of Unit Flexible Factor			
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	LA Basin	LA Basin	LA Basin
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4	4	4

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Central Coast Community Energy, a California joint powers authority (“Purchaser”) and Silicon Valley Clean Energy, a California joint powers authority (“Seller”), and each individually a “Party” and together the “Parties”, dated as of October 16, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

**ARTICLE 1
TRANSACTION TERMS**

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility.¹ A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's

¹ Note to draft: Seller to revise as appropriate.

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Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.²

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap

² For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a "Replacement Unit") in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to

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Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser’s Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller’s obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit’s SC, to follow Purchaser’s instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller shall, and shall cause the Shown Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser’s rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit’s SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit’s SC shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.

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ARTICLE 3
PAYMENTS

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

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notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

**ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS**

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

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

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- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
HOLDBACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser's request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser's use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Purchaser's request under this Article Five.

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ARTICLE 6

ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure

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pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

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6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Purchaser

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

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace it with the following:

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“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

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30 September 2020**

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 is amended by inserting the following in the beginning of the section:
“On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v.*

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Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

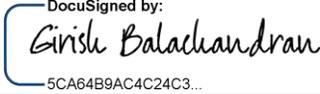
**Central Coast Community Energy, a
California joint powers authority
[PURCHASER]**

By:  _____
69C253774488497...

Name: Tom Habashi

Title: CEO

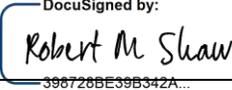
**Silicon Valley Clean Energy, a
California joint powers authority
[SELLER]**

By:  _____
5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: CEO

Approved as to Form:

By:  _____
3987268E39B342A...

Print: Robert M Shaw

Title: COO and General Counsel

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing 19MW of Product (as defined under such confirmation) from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

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

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.³

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

³ Note to draft: Parties to revise as appropriate.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

- RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: PG&E

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): Not applicable

Flexible Capacity Category (if applicable): 1

Delivery period:

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)

Flexible Capacity, if applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)

Unit 1

<u>Unit Specific Information</u>	
<u>Resource Name</u>	<u>Colusa Generating Station</u>
<u>Physical Location</u>	<u>Stonyford, CA</u>
<u>CAISO Resource ID</u>	<u>COLUSA 2 PL1X3</u>
<u>SCID of Resource</u>	<u>PCG2</u>
<u>Unit NQC by month (e.g., Jan=50, Feb=65):</u>	<u>Varies</u>
<u>Unit EFC by month (e.g., Jan=30, Feb=50)</u>	<u>Varies</u>
<u>Resource Type (e.g., gas, hydro, solar, etc.)</u>	<u>Natural Gas</u>
<u>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</u>	<u>Flex 1</u>
<u>TAC Area (e.g., PG&E, SCE)</u>	<u>PG&E</u>
<u>Prorated Percentage of Unit Factor</u>	
<u>Prorated Percentage of Unit Flexible Factor</u>	
<u>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</u>	<u>CAISO System</u>
<u>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</u>	<u>4</u>

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A



Department of Energy
Bonneville Power Administration
Power Services
CONFIRMATION AGREEMENT

From: Bonneville Power Administration PO Box 3621 Portland, OR 97208-3621 BPA Preschedule: 503-230-3813 BPA Real Time: 503-230-3341	To: Silicon Valley Clean Energy Fax: 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087 BPA Contract: 21PM-16402 Trade Date: 08/05/2020
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This confirmation agreement (“Confirmation Agreement”) sets forth the terms of this transaction agreed to by the Bonneville Power Administration (“BPA”) and Silicon Valley Clean Energy, a California joint powers authority (“SVCE”) (each a “Party” and together the “Parties”). For the purposes of this Confirmation Agreement, the Enabling Agreement shall be deemed to include the Exhibit C-SS Specified Source Confirmation Attachment published by the WSPP. Transactions hereunder are in accordance with the Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services 19PM-16003 (“Enabling Agreement”). The definitions and provisions contained in the Enabling Agreement, in the RA Rules (as defined below), and in the tariffs and protocols of the California Independent System Operator (“CAISO”), as amended from time to time (the “Tariff”), shall apply to this Confirmation Agreement and are incorporated by reference; provided that, to the extent that any provision in this Confirmation Agreement is inconsistent with any provision of the Enabling Agreement, then the provision in this Confirmation Agreement shall govern the rights and obligations of the Parties hereunder.

Buyer: SVCE Trader: Monica Padilla Phone: 408.721.5301 ext 1009 Broker: None Product: Surplus Firm (WSPP Schedule C) Product Description: Energy with an ACS Emissions Factor, MCC Bucket Category 2	Seller: BPA Trader: Mark Miller Phone: 503-230-4003 Holiday: NERC Point of Delivery: MALIN500 (Malin 5 N101)(COB N-S) Resource ID: BPA1 MALIN500_I_F_BPARA Deal Key: 201975
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Start Date	End Date	Hourly Contract Quantity (MW)	Energy Price \$/MWh	Delivery Hours	Total Amount (MWh)	Revenue/ Cost
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All hours will be shown in Pacific Prevailing Time(PPT) defined as HE 0100- HE 2400

I. Product Provisions

1. Definitions:

- a. “Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively).
- b. “CPUC” means the California Public Utilities Commission.

- c. "Delivery Point" means the Point of Delivery.
- d. "Delivery Term" means the period of time beginning on the Start Date and ending on the End Date.
- e. "Flat" is defined as HE 0100 through HE 2400.
- f. "MCC Bucket(s)" means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.
- g. "MCC Bucket Category 2" means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) every Monday through Friday, for 8 consecutive hours that include 4 pm through 9 pm.
- h. "Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for SVCE by the CPUC pursuant to the RA Rules, or by any other governmental body having jurisdiction.
- i. "RA Rules" means orders of the CPUC as contained in Decision ("D.") 04-01-050, D.04-10-035, D.05-10-042, D.06-04-40, D.06-06-064, D.06-07-031, D.06-12-037, D.07-06-029, D.08-06-031, D.09-06-028, D.10-06-036, D.10-12-038, D.11-06-022, D.11-10-003, D.12-06-025, D.13-06-024, D.14-06-050, D.15-06-063, D.16-06-045, and any other existing, subsequent, or modifying decisions, resolutions, orders or rulings issued by the CPUC from time to time in the Resource Adequacy phases of Rulemaking R.04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.11-10-023, R.14-02-001, R.14-10-001, R.17-09-020, and D.20-06-028 or by any applicable successor proceeding.
- j. "System Resource" means a group of resources located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the Delivery Point. System Resource does not include any energy source with an e-tag from a busbar of a nuclear or coal-fired generating facility. However, the Parties understand that the ACS Emissions Factor (set forth below in Exhibit C-SS Specified Source Confirmation Attachment) takes into account some portion of nuclear and/or unspecified generation within BPA's System Resource.

2. Product Requirements:

- a. The Product cannot be curtailed by Seller or Buyer for economic reasons.
- b. Seller shall deliver the Product in the amount of the Hourly Contract Quantity into the CAISO on behalf of Buyer without substituting electricity from another source, as evidenced by e-Tags, or such other format acceptable to Buyer. Deliveries shall be measured for each hour that the Product is delivered to the CAISO but shall not exceed the lesser of corresponding amounts shown on the e-Tags or meter data from the System Resource.
- c. Seller shall self-schedule (or in the alternative, bid in at a level between negative [REDACTED]) into the CAISO day ahead and real-time markets for delivery.
- d. Energy delivered pursuant to this Confirmation Agreement will not be sourced from resources internal to the CAISO Balancing Authority Area.
- e. The capacity supporting energy to be delivered pursuant to this Confirmation Agreement is surplus to the expected capacity requirements of the System Resource's host balancing authority area and is not committed to another balancing authority area (i.e. no double-counting).
- f. Throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Product from the System Resource to a third party or other balancing authority area.
- g. Throughout the Delivery Term, Product will be delivered to the Delivery Point using Firm Transmission.
- h. Throughout the Delivery Term, Seller's firm energy obligation is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the System Resource's host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its

- i. It is Buyer's sole responsibility to ensure it has obtained sufficient intertie import capability at the Delivery Point.
- j. Unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, BPA shall provide the full Contract Quantity to SVCE in compliance with the applicable provisions of the Tariff implementing the RA Rules, including, without reservation, the CPUC Final Decision 20-06-028, and section 40.6 of the CAISO's Tariff. SVCE shall have no liability for the failure of BPA to comply with such Tariff provisions, including any penalties or fines imposed on BPA by the CAISO for such noncompliance.
- k. BPA may schedule quantities greater than the Hourly Contract Quantity as long as the Total Amount is not exceeded over the Delivery Period.

3. Representations:

3.1 BPA and SVCE represent and expressly agree that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure SVCE's (or a subsequent purchaser's) right to the use of the Contract Quantity for the sole benefit of SVCE's RAR, consistent with the CAISO Tariff and RA Rules, including:

- a. Meeting requirements established by the CAISO Tariff and RA Rules, including (1) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term required for full RAR eligibility, (2) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to "deliverability" standards established by the CPUC or other regional entity or entities responsible for RA administration, and (3) provision of a Supply Plan to the CAISO by BPA's Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by SVCE's Scheduling Coordinator (as such terms are defined in the CAISO Tariff);
- b. Negotiating in good faith to make necessary amendments, if any, to this Confirmation Agreement mutually agreed upon to conform this Confirmation Agreement to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO or other regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain for each of the Parties; and
- c. At all times using "Good Utility Practice" as defined in the CAISO Tariff.

3.2 BPA represents that throughout the Delivery Term:

- a. Seller represents and warrants that Seller holds the rights to the Product free and clear of all liens and encumbrances, and Seller agrees to convey and hereby conveys all such Product to Buyer free and clear of all liens and encumbrances as included in the delivery of the Product subject to the terms and conditions contained herein;
- b. SVCE or subsequent purchaser has the exclusive right to count the Contract Quantity of Product from BPA's System Resource toward SVCE's RAR;
- c. The Hourly Contract Quantity of Product sold to Buyer hereunder has been sold once and only once by Seller and no portion of the Contract Quantity of Product has been sold by BPA to any third party in order to satisfy RAR;
- d. Title and reporting rights to the Product shall pass from Seller to Buyer at the Delivery Point; and
- e. BPA shall meet all terms applicable to it under CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and RA Rules approved by the CPUC as applying to the Product.

4. Indemnity Against Penalties and Replacement:

If BPA fails to fulfill its obligation under this Confirmation Agreement to provide the Product, and such failure is not excused under this Confirmation Agreement or the Enabling Agreement or by SVCE's failure to perform, then, in addition to any damages BPA would owe to SVCE pursuant to Section 21.3 of the WSPP Agreement, BPA agrees to indemnify SVCE for any monetary penalties assessed by the CPUC and/or the CAISO against SVCE for SVCE's failure to meet the requirements of the RA Rules or Tariff as a direct result of BPA not fulfilling its obligation under this Confirmation Agreement. Such failure may be excused to the extent BPA provides SVCE with sufficient notice to take action necessary to avoid such monetary penalties being assessed.

Notwithstanding the foregoing, if approved by the CPUC and/or the CAISO, BPA may replace any Product necessary for SVCE to make its equivalent RA demonstration with another System Resource.

5. Resale of Product:

- a. SVCE may re-sell all or a portion of the Contract Quantity and any associated rights, in each case, acquired under this transaction. In the event SVCE re-sells all or a portion of the Contract Quantity of Product and any associated rights acquired under this transaction ("Resold Product") BPA agrees to follow SVCE's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product. With respect to any Resold Product, BPA continues to be liable to SVCE for any damages due to the failure of BPA to comply with the terms of this transaction; provided, and BPA shall have no contractual obligation or liability to any subsequent purchaser.
- b. BPA's obligations under this Section 5 are contingent on SVCE 1) providing BPA with the information required by this Section 5 no later than two (2) Business Days prior to the deadline for filing the Supply Plan for the Resold Product; 2) any requested assignment being consistent with federal law applicable to BPA. Further, any resale of Product by SVCE to a subsequent purchaser must be permitted under the Tariff, CAISO business practices and applicable federal law, and BPA shall not be required to take any action hereunder or execute any documents or instruments that would not be permitted under the Tariff, CAISO business practices or applicable federal law.
- c. In the event there is any Resold Product, SVCE agrees to immediately notify BPA of such sale and agrees to provide BPA with all the information specified below promptly following such sale (and any other information reasonably requested by BPA so that BPA may perform its obligations in this Section 5) and promptly notify BPA of any subsequent changes to such information with respect to any particular sale:
 - i. Benefitting load serving entity SC identification number (SCID),
 - ii. Volume (in MW) of Resold Product,
 - iii. Sale delivery period for Resold Product.

II. ACS Provisions

1. BPA is recognized by the California Air Resources Board (CARB) as an Asset Controlling Supplier (ACS), as that term is defined in the California Mandatory Greenhouse Gas Emissions Reporting Requirements, California Code of Regulations title 17, section 95102 ("CARB GHG Regulations").
2. "ACS Emissions Factor" means the energy can be reported using CARB-approved emission factors, subject to the requirements to claim specified source power.
3. BPA shall act as SVCE's CAISO scheduling coordinator (SC) to bid and deliver the Contract Quantity of Product, consistent with Exhibit C-SS of this Confirmation Agreement, to the CAISO and retain all revenues associated with such deliveries (and if prices are negative, liable for all payments to) CAISO. BPA shall receive no additional compensation for acting as scheduling coordinator under this Transaction. As SVCE's SC, BPA's bid will be consistent with the requirements of the RA Rules and any CAISO tariff requirements.
4. BPA will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Product delivered pursuant to this Confirmation. The Parties acknowledge that BPA will be responsible for satisfying any

Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation.

5. BPA shall ensure the e-tag qualifies as energy with an ACS Emissions Factor and lists the following:
 - a. ZES001 in the Carbon Copy Field of the tag.
 - b. "Silicon Valley Clean Energy" in the Comments Field of the tag.
 - c. Advanced notice to SVCE or its agent, of the e-tag is not required. If SVCE re-sells the ACS Energy, BPA will use the information provided from SVCE to populate the fields in (a) and (b) above with information identifying the subsequent purchaser.
6. BPA shall invoice SVCE the Energy Price described on page one of this Confirmation Agreement for each MWh delivered to the CAISO due to this Confirmation Agreement.

III. Additional Provisions

1. **Collateral Requirements.** Notwithstanding any provision in the Enabling Agreement to the contrary, neither Party shall be required to post collateral or other security for this Confirmation, except that in the event SVCE's Moody's Investors Services, Inc. credit rating drops below investment grade, SVCE shall be required to post collateral or other security for this Confirmation, in an amount determined pursuant to Section 27 of the WSPP Agreement, and taking into account any other collateral provided to BPA under this Confirmation: provided, however that in no event shall SVCE be required to provide collateral that in the aggregate exceeds Termination Payment calculated in accordance with Section 22.2 and Section 22.3 of the WSPP Agreement.
2. **Confidentiality:** Each Party recognizes that this Confirmation Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Section 30.1(4) of the WSPP Agreement is amended by (a) inserting "or requested" after the word "required" and (b) "or compliance filings" after both instances of "proceedings". Notwithstanding the Enabling Agreement, the Parties agree that SVCE, and any subsequent purchaser, may disclose this Confirmation Agreement to the CPUC, the CAISO or any other governmental body having jurisdiction in order to support its RAR showings.
3. **Entire Agreement, No Oral Agreements or Modifications:** This Confirmation Agreement sets forth the terms of this transaction and, along with the Enabling Agreement, shall constitute the entire agreement between the Parties for the purchase and sale of the Product. Notwithstanding any other provision of the Enabling Agreement, this transaction may be confirmed only by a Documentary Writing executed by both Parties, and no amendment or modification to this transaction shall be enforceable except under a Documentary Writing executed by both Parties.
4. **Joint Powers Authority:** SVCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. SVCE will be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation Agreement.
5. **Counterparts:** This Confirmation Agreement may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Confirmation Agreement by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
6. **Surplus Power Use Outside Pacific Northwest:** BPA has determined it has surplus power available in the amount marketed for the term of this Confirmation Agreement. All sales of surplus power for use outside the Pacific Northwest under this Confirmation Agreement are subject to the provisions of Public Law 88-552 and Section 9(c) of Public Law 96-501. BPA shall have the right to curtail a portion of, or terminate all of: (a) the capacity associated with a surplus firm peaking capacity sale on 60 months' written notice; or (b) the energy associated with a surplus energy sale on a 60-day written notice specifying the amounts and duration of the curtailment or termination, if such capacity and/or energy is needed to meet the capacity and/or energy requirements in the Pacific Northwest. Such curtailments to SVCE shall be limited to the amounts and duration necessary to cover BPA's projected Pacific Northwest needs. The sale of capacity and/or energy to SVCE under this Confirmation Agreement shall continue in months during which such capacity and/or

7. **BPA Specified Asset Controlling Supplier (ACS) Provisions:** The Parties agree this is a confirmation for the delivery of energy with a BPA Specified ACS Emissions Factor sourced from “BPAPOWER” on a NERC e-tag. The Parties further agree this transaction includes the WSPP Exhibit C-Specified Source (C-SS) provisions set forth or referenced in Exhibit C-SS attached hereto. This Confirmation Agreement and the attached Exhibit C-SS memorialize the terms of the Parties’ agreement. All prior terms are superseded by the terms of this Confirmation Agreement and Enabling Agreement. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Enabling Agreement or the WSPP Agreement, as applicable.

We are pleased to enter into this transaction. Please sign and return an executed copy of this Confirmation via fax to BPA 503-230-7463 or email to PTCCContractAdmin@bpa.gov.

AGREED AND ACCEPTED

Bonneville Power Administration

**MARK
MILLER**

Digitally signed by MARK
MILLER
Date: 2020.10.28
15:25:46 -07'00'

Print Name: Mark E. Miller
Title: Account Executive
Date: 10/28/20

Silicon Valley Clean Energy

DocuSigned by:

Girish Balachandran

Print Name: Girish Balachandran

Title: CEO
Date: 10/28/2020

**EXHIBIT C-SS
SPECIFIED SOURCE
CONFIRMATION ATTACHMENT**

a. Identity of Source:
The following (i) facility, generator, unit or (ii) ACS system (“Source”): BPA ACS System
Source CARB IDs, if applicable and available: ARB ID #4000
California Energy Commission RPS ID, if Source is an ERR: N/A
WREGIS ID#, if applicable: N/A
b. Source EF_{sp}:
The BPA 2021 ACS Emission Factor posted on the California Air Resources Board website. https://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/acs-power.htm
c. Carbon Adjustment (rapid settlement if Seller delivers higher emissions factor energy than agreed): Carbon Adjustment applies unless the following box is checked:
Carbon Adjustment <u>does not</u> apply and instead of Carbon Adjustment, Seller shall compensate Purchaser as follows, in addition to Purchaser’s remedies in Section 21 of the WSPP Agreement, if Seller fails to schedule and deliver energy from the Source unless excused pursuant to the terms of the applicable Schedule or this Confirmation: For each MWh that BPA does not deliver from the BPA ACS System, or if BPA does not deliver [REDACTED], BPA shall pay a fixed damage amount of [REDACTED] not delivered from the BPA ACS System.
d. EF True-Up (full indemnity for difference between agreed and CARB-assigned emissions factors, settled after verification): EF True-Up does not apply unless one or more of the following boxes that are checked cause a change to EF _{sp} or EF _{asn} :
<input type="checkbox"/> Change in generator operations or fuel source. <input type="checkbox"/> Prospective or retroactive change in law (including AB32). <input type="checkbox"/> Other, as follows: <input type="checkbox"/> All other circumstances. <input type="checkbox"/> EF True Up damages are limited as follows: [e.g., caps]
e. RECs Disclosure (not applicable for an ACS system Source): Seller represents and warrants that the Source is not an ERR, unless the box is checked below. This is a disclosure, not an option, and failure to check this box does not excuse performance if the Source is or becomes an ERR.
<input type="checkbox"/> The Source is an ERR, and Section 6.c therefore applies.
f. Regulation Incorporation: This transaction is not Regulation Incorporation unless the following box is checked:
<input type="checkbox"/> This transaction is Regulation Incorporation and Section 6.e applies.
g. Additional provisions:

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY
AND
SOUTHERN CALIFORNIA EDISON COMPANY**

This Confirmation Letter including all appendices hereto (“Confirmation”) confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority (“Counterparty” or “Buyer”) and Southern California Edison Company (“SCE” or “Seller”), each individually a “Party” and together the “Parties”, dated as of 10/28/2020 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties, effective as of February 7, 2018, along with the Cover Sheet, any amendments and annexes thereto (the “Master Agreement”), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are referred to collectively herein as the “Collateral Annex”) (the Master Agreement and the Collateral Annex shall be collectively referred to as the “EEI Agreement”). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

ARTICLE 1. TRANSACTION TERMS

1.1 Product: Elections

Product: The product, including the Capacity Attributes of the Unit(s), as defined in Appendix C, or Alternate Unit(s) provided in accordance with Section 2.3.

Flexible Capacity: The Product shall include Flexible Capacity if identified in Appendix B as applicable.

1.2 Delivery and Receipt of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller the Product in the amount of the applicable Contract Quantity for each month of the Delivery Period.

1.3 Delivery Period and Term

- (a) Delivery Period. The Delivery Period is as specified in Appendix B of this Confirmation in the row titled “Delivery Period”, unless terminated earlier in accordance with the terms of this Agreement.
- (b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.4 Contract Quantity

The Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled “Contract Quantity.”

1.5 Flexible Capacity

If the Parties have designated Flexible Capacity as “Applicable”, then the Flexible Capacity included in the Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled “Flexible Capacity.”

1.6 Contract Price

The Contract Price means, for any Showing Month, the price specified in Appendix B of this Confirmation under the heading titled “Contract Price,” for such Showing Month.

ARTICLE 2. DELIVERY OBLIGATIONS**2 Seller’s Delivery Obligations**

Seller shall provide Buyer with the Expected Contract Quantity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing deadline applicable for the Showing Months as specified in Sections 1.4 and 1.5 herein, in accordance with the CAISO Tariff, identifying and confirming the transfer of the Expected Contract Quantity of Product to Buyer for each Showing Month.

- (b) Seller shall or shall cause the Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the initial Compliance Showing deadline for each Showing Month, confirming that Buyer will be specified as the recipient of the Expected Contract Quantity for such Showing Month in the Unit's SC Supply Plan (such notice, the "Expected Contract Quantity Notice"). For illustrative purposes only, as of the Confirmation Effective Date, the applicable Compliance Showing deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Term.
- (c) If Seller is delivering Product to Buyer from more than one Unit, Seller shall deliver such Product to Buyer from each Unit in accordance with the Contract Quantity Unit Allocation, as set forth in Appendix C; provided, Seller may modify the Contract Quantity Unit Allocation from time to time by providing email notice to Buyer's Supply Plan contact, as set forth in Appendix D, no later than the initial Compliance Showing deadline for each Showing Month.

2 Adjustments to Contract Quantity

Seller shall deliver to Buyer the Contract Quantity of Product for each Showing Month consistent with the following:

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Buyer, no later than fifteen (15) Business Days before the initial deadline for the Compliance Showing applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the CAISO Tariff.
- (b) Reductions in Unit NQC and Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Confirmation Effective Date as determined by the CAISO. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Alternate Units, provided, that in each case Seller provides and identifies such Alternate Units in accordance with Section 2.3.

- (c) SWRCB Approval: Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced by Seller in the event the Unit does not receive SWRCB Approval and Seller provide Notice to Buyer two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. In the event the Unit fails to receive SWRCB Approval, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from Alternate Units, provided, Seller must provide and identify Alternate Unit(s) two (2) Business Days before the initial Compliance Showing deadline for such Showing Month and otherwise provide and identify such Alternate Unit(s) in accordance with Section 2.3.

23 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity in accordance with Section 2.2 for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Buyer of its intent to provide Product from and identify alternate units that (i) are like-for-like units similar to the Unit originally identified in Appendix C and have the same Capacity Attributes of the Unit originally identified in Appendix C, including the Resource Category and the Unit EFC Category, (ii) are accepted by the CAISO, and (iii) otherwise that satisfy the requirements of this Agreement ("Alternate Units"), meeting the above Contract Quantity requirements no later than fifteen (15) Business Days before the initial deadline for Buyer's Compliance Showing related to such Showing Month;
- (b) Seller shall, or shall cause the Unit's SC to submit a Monthly Supply Plan and an Annual Supply Plan, as applicable, that includes the Alternate Units, in accordance with the CAISO Tariff, no later than fifteen (15) Business Days before the initial Compliance Showing deadline for the applicable Showing Month;
- (c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month, then any such Alternate Units shall not be deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Alternate Units that meet the requirements of this Section 2.3, then any such Alternate Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

24 Damages for Failure to Provide Capacity

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any Showing Month, in accordance with Section 2.1 (the “Replacement Obligation”), in each case as applicable, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace all or any portion of the Replacement Obligation for the applicable Showing Month with capacity having equivalent Capacity Attributes as the Expected Contract Quantity; provided, if, using commercially reasonable efforts, Buyer is unable to acquire capacity having equivalent Capacity Attributes for any portion of any Showing Month, Buyer may replace such portion of the Replacement Obligation with capacity having Capacity Attributes in excess of the Contract Quantity (the “Replacement Capacity”). Buyer may enter into purchase transactions with one or more parties to purchase Replacement Capacity. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner to minimize damages in procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, including any transaction costs and expenses incurred in connection with such procurement, plus (B) each applicable Replacement Capacity Price multiplied by the aggregate amount of Replacement Obligation neither provided by Seller as Alternate Capacity nor purchased by Buyer as Replacement Capacity, for all applicable portions of the applicable Showing Month pursuant to Section 2.4(a), and (ii) the Replacement Obligation minus the Alternate Capacity, not provided for all applicable portions of the applicable Showing Month times the Contract Price for that month. Buyer’s invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and shall include supporting documentation.

25 Indemnities for Failure to Deliver Expected Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from

any of the following:

- (a) Seller's failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;
- (b) Seller's failure to provide notice of the non-availability of any portion of the Expected Contract Quantity for any portion of the Delivery Period as required under Section 2.2;
- (c) Seller's or the Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Expected Contract Quantity for each Unit purchased hereunder for each Showing Month of the Delivery Period;
- (d) Seller's or the Unit's SC's failure to submit accurate Supply Plans that identify Buyer's right to the Expected Contract Quantity for each Unit purchased hereunder for each Showing Month of the Delivery Period; or
- (e) any other failure by Seller to perform its obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties.

⌘ Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation, in accordance with Applicable Laws and CPUC Decisions ("Resold Product"); provided, with respect to Resold Product that includes the sale of Capacity Attributes that impact Seller's obligations under this Confirmation, Buyer agrees to: (a) notify Seller that such a sale has occurred; (b) provide Seller with the information described in Appendix E; and (c) notify Seller of any subsequent changes to the information in Appendix E with respect to any particular sale; in each case promptly following such sale and in no event later than the initial Compliance Showing deadline for each Showing Month. Subject to Article 6 below, Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product; and (ii) take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product.

Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 2.4 and 2.5, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser. Buyer acknowledges

and agrees that with respect to any Resold Product, if Seller incurs any liability to any purchaser of such Resold Product due to the failure of Buyer to comply with the terms of this Confirmation, and Buyer would have had liability to Seller under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Buyer shall be liable to Seller under this Confirmation for the amounts it would have been liable to Seller for had such Resold Product not been sold to a subsequent purchaser.

7 CAISO Offer Requirements

Seller shall, or cause each Unit's SC to, schedule with, or make available to, the CAISO the Expected Contract Quantity for each Unit in compliance with the CAISO Tariff, and shall, or shall cause each Unit's SC, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

8 Unit SC's Substitution Obligation

After the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit's SC for a Showing Month in accordance with the CAISO Tariff, and if the CAISO determines that any portion of the Expected Contract Quantity for any portion of a Showing Month that was shown by Buyer in its Compliance Showings requires outage substitution in accordance with Section 40.9.3.6 of the CAISO Tariff because the Unit, or Alternate Unit, as applicable, is scheduled to take an outage (planned or otherwise) (such amount requiring outage substitution, the "SC Substitute Capacity"), then: (a) Seller shall have no liability under Sections 2.4 or 2.5 with respect to such SC Substitute Capacity; and (b) Seller shall have no liability to Buyer for any costs that are allocated to Buyer by the CAISO for any CPM Capacity procured by the CAISO pursuant to the Capacity Procurement Mechanism and that are related to such SC Substitute Capacity.

ARTICLE 3. PAYMENT

3.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a one-time payment to Seller for the Product within five (5) Business Days following the Confirmation Effective Date and before Seller transfers the Product in accordance with Section 2.1. Buyer shall make the Monthly Payment to Seller, as follows:

$$\text{Monthly Payment} = (A \times B \times 1,000)$$

where:

A = applicable Contract Price for that Showing Month

B = The amount of Contract Quantity of Product for each Showing Month of the Delivery Period, as set forth in Section 1.4.

The Monthly Payment calculation shall be rounded to two decimal places.

3.2 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) energy sales, and (iii) any revenues for black start or reactive power services.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Aggregate Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(iii)). To the extent permitted by the CAISO Tariff, Seller shall, or shall cause each Unit's SC to, submit RUC Availability Bids for the Expected Contract Quantity for each Unit for each hour of the Delivery Period at a bid price of Zero Dollars (\$0) per MW per hour, regardless of whether each Unit is shown on a Supply Plan for the applicable Showing Month.
- (c) In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,
 - (i) all such Buyer revenues described in this Section 3.2, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity; and

- (ii) all such Seller, or a Unit’s SC, owner, or operator revenues described in this Section 3.2, but received by Buyer shall be remitted to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each Showing Month provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of the Seller and for Seller’s account.

3.3 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party.

ARTICLE 4. OTHER BUYER AND SELLER COVENANTS

4 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period: (a) cause the Benefiting Load Serving Entity SCID to be included in all applicable Supply Plans; (b) execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Aggregate Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Section 2.6; and (c) cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. If during the Delivery Period, there is a change to the Benefiting Load Serving Entity SCID, the Parties agree to communicate such changes to each other promptly. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Authority having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

4 Seller’s Representations, Warranties and Covenants

- (a) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
- (i) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (ii) No portion of the Aggregate Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
 - (iii) Seller shall comply with Applicable Laws relating to the Product;
 - (iv) (A) Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Aggregate Contract Quantity as CPM Capacity and (B) in the event the CAISO makes such a designation Seller shall, and shall cause the Unit's SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation;
 - (v) Buyer shall have the exclusive right to offer the Aggregate Contract Quantity, or any portion thereof, to the CAISO as CPM Capacity and Seller shall not, and shall cause the Unit's SC not to, offer any portion of the Aggregate Contract Quantity to the CAISO as CPM Capacity or accept any designation of any portion thereof as CPM Capacity;
 - (vi) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
 - (vii) Seller shall cause the Unit's SC, owner and operator to comply with Applicable Laws relating to the Product;
 - (viii) Buyer shall have no liability for the failure of Seller or the failure of the Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.
 - (ix) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit does not exceed the Unit NQC or Unit EFC for that Unit;
 - (x) Seller has notified the SC of the Unit that Seller has transferred the

Contract Quantity, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, with respect to each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff and this Confirmation;

- (xi) Seller has notified the SC of the Unit that Seller is obligated to cause the Unit's SC to provide to the Buyer, at least fifteen (15) Business Days before the initial deadline for each Compliance Showing, the applicable Expected Contract Quantity of the Unit for such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
 - (xii) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
- (b) If the Parties have designated Flexible Capacity as "Applicable", then the following representation and warranty shall apply to Seller throughout the Delivery Period:
- (i) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit and which are eligible to satisfy a load serving entity's Flexible RAR, does not exceed the Unit EFC for that Unit.
- (c) Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, all of the information set forth on Appendix C hereto is true, correct and complete.
- (d) If the Parties have designated Flexible Capacity as "Applicable", then Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, the CAISO has given the Unit the Unit EFC set forth on Appendix C hereto.

ARTICLE 5. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that: (i) Buyer may disclose the Aggregate Contract Quantity or any applicable portion of the Aggregate Contract Quantity, including any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable, under this Transaction to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable; (ii) Seller may disclose the transfer of the Aggregate Contract Quantity and the applicable Contract Quantity and Expected Contract Quantity (as well as any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable) for each Showing Month under this

Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; (iii) both Parties may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the Independent Evaluator; and (iv) Buyer and the Independent Evaluator may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the California Energy Commission, and participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Aggregate Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

ARTICLE 6. HOLDBACK

No later than five (5) Business Days before the deadline for the initial Compliance Showing deadline with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Unit's SC not to list, a portion or all of a Unit's applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 2.1 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.4 or 2.5. Seller shall, or shall cause the Unit's SC to, comply with Buyer's request under this Article 6.

ARTICLE 7. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with FERC Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42. Seller also agrees that it will not, in any filings, if any, made subject to FERC Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 8. COLLATERAL REQUIREMENTS

8.1 Counterparty Collateral Requirements

Notwithstanding anything to the contrary contained in the EEI Agreement, Counterparty shall, no later than five (5) Business Days after the Confirmation Effective Date, provide to, and maintain with, SCE a Full Floating Independent

Amount as long as Counterparty or its Guarantor, if any, does not maintain Credit Ratings of at least (a) BBB- from S&P and Baa3 from Moody's, if such entity is rated by the Ratings Agencies, or (b) BBB- by S&P or Baa3 by Moody's if such entity is rated by only one Ratings Agency. The Full Floating Independent Amount shall equal the value set forth in Appendix B of this Confirmation. Commencing after the initial Compliance Showing deadline of the first Showing Month of the Delivery Period, and for each initial Compliance Showing deadline during the Delivery Period thereafter, the Full Floating Independent Amount shall be reduced to twenty percent (20%) of the sum of the FFIA Monthly Payments for the Next Showing Month and all remaining months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Full Floating Independent Amount for Counterparty shall be added to the Exposure Amount for SCE and subtracted from the Exposure Amount for Counterparty.

For the purposes of calculating Exposure, the Monthly Payment shall be deemed accrued and payable upon the initial Compliance Showing deadline for the applicable Showing Month.

8.2 Current Mark-To-Market Value

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy Capacity product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction.

8.3 Credit Terms

The Parties agree that the credit and collateral provisions of the EEI Agreement shall govern this Transaction; provided, however, that for purposes of calculating a Party's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, with respect to this Transaction only (a) if Counterparty has Exposure to SCE, then the amount of Exposure for this Transaction is deemed to be zero dollars (\$0), and (b) in no event shall SCE be required to post or maintain an Independent Amount with Counterparty.

ARTICLE 9. OTHER

9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement, provided that, with respect

to this Transaction only, the following language is added at the end of Section 5.2 of the Master Agreement, with any terms which are defined in this Confirmation being used in the Master Agreement with the definitions given to such terms in this Confirmation:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any Governmental Authority having jurisdiction, because Buyer is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties or fines, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

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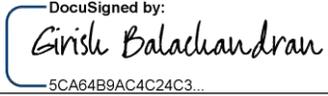
In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date first written:

**SILICON VALLEY CLEAN ENERGY
AUTHORITY,**

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a California joint powers authority.

a California corporation.

By: 
5CA64B9AC4C24C3...

By: 
427251C63195416...

Name: Girish Balachandran

Name: Gus Flores

Title: Chief Executive Officer

Title: Principal Manager, Contract Origination

Date: 10/27/2020

Date: 10/28/2020

APPENDIX A DEFINED TERMS

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in Appendix B under the column titled “Contract Quantity” which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period.

“Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Alternate Capacity” means Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.

“Alternate Unit” means a generating unit meeting the requirements specified in Section 2.3.

“Annual Supply Plan” has the meaning set forth in the CAISO Tariff.

“Applicable Laws” means the CAISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project, the Unit or the terms of this Agreement.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Benefiting Load Serving Entity SCID” is as specified in Appendix D.

“Buyer” has the meaning specified in the introductory paragraph of this Confirmation.

“CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

“CAISO Control Area” has the meaning set forth in the CAISO Tariff.

“CAISO Controlled Grid” has the meaning as set forth in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligation;

provided that, notwithstanding the foregoing, Capacity Attributes shall exclude all flexible capacity resource adequacy attributes, characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled associated with the Unit; provided further, notwithstanding the foregoing, Capacity Attributes shall exclude intra-month substitution resource adequacy attributes.

“Capacity Procurement Mechanism” has the meaning set forth in the CAISO Tariff.

“Collateral Annex” has the meaning specified in the introductory paragraph of this Confirmation.

“Compliance Obligations” means the RAR and Local RAR.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings) and (b) RAR compliance or advisory showings (or similar or successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Price” means, for any Showing Month, the price specified in Appendix B under the column titled “Contract Price” for such Showing Month.

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled “Contract Quantity”, which Seller has agreed to provide to Buyer from the Unit for each Showing Month.

“Contract Quantity Unit Allocation” means, if Seller is delivering Product to Buyer from more than one Unit, the allocation of Contract Quantity Seller will deliver from each Unit, as set forth in Appendix C and as modified by Seller from time to time in accordance with Section 2.1(c).

“Cover Sheet” has the meaning specified in the introductory paragraph of this Confirmation.

“CPM Capacity” has the meaning set forth in the CAISO Tariff.

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Current Mark-to-Market Value” has the meaning specified in Section 8.2

“Delivery Period” has the meaning specified in Section 1.3(a).

“EI” has the meaning specified in the introductory paragraph of this Confirmation.

“EI Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and after giving effect to any reductions to Contract Quantity as specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“Expected Contract Quantity Notice” has the meaning specified in Section 2.1(b).

“FFIA Monthly Payment” shall be the Monthly Payment calculated using the Contract Quantity rather than the Expected Contract Quantity, such that variable B in the formula for Monthly Payment shall be as follows: $B = \text{the Contract Quantity of Product for each applicable Showing Month}$.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive,

judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

“Local Capacity Area” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Monthly Payment” has the meaning specified in Section 3.1.

“Monthly Supply Plan” has the meaning set forth in the CAISO Tariff.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Next Showing Month” means the next calendar month for which a Compliance Showing will be made.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Planned Outage” means, an Approved Maintenance Outage (as defined in the CAISO Tariff), but does not include a RA Maintenance Outage With Replacement (as defined in the CAISO Tariff), a Short-Notice Opportunity RA Maintenance Outage (as defined in the CAISO Tariff) or an Off-Peak Opportunity RA Maintenance Outage (as defined in the CAISO Tariff).

“Product” means the Capacity Attributes of the Unit(s), including any capacity from RMR Contracts for the applicable Unit, or its successor, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor; provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or

increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and

- (c) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“Replacement Capacity” has the meaning specified in Section 2.4.

“Replacement Capacity Price” means the market price for Product with Capacity Attributes reasonably equivalent to the quantity of Product not provided by Seller under this Confirmation, as determined in the manner upon which market prices are determined under Section 5.2(b) of the Master Agreement. For purposes of this Transaction and Confirmation, the “Replacement Capacity Price” shall be deemed to be the “Replacement Price” as defined in Section 1.51 of the Master Agreement.

“Replacement Obligation” has the meaning specified in Section 2.4.

“Resold Product” has the meaning specified in Section 2.6.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“RMR Contracts” has the meaning set forth in the CAISO Tariff.

“RUC Availability Bid” has the meaning set forth in the CAISO Tariff.

“RUC Availability Payment” has the meaning set forth in the CAISO Tariff.

“SC” has the meaning set forth in the CAISO Tariff.

“SC Substitute Capacity” has the meaning set forth in Section 2.8.

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“SWRCB Approval” means (1) a decision of the State Water Resource Control Board that (i) approves the Unit’s request to extend their once-through-cooling deadline, in the form presented on terms and conditions acceptable to SCE; (ii) does not contain conditions or modifications unacceptable to SCE, and (iii) becomes effective by approval from the Office of Administrative Law; or (2) acceptance by the State Water Resource Control Board of the Unit’s demonstration that the Unit is compliant with the Once Through Cooling Policy Track 2 requirements, as modified by that certain Settlement Agreement and Release Regarding Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling Between State Water Resources Control Board and Dynegy dated October 9, 2014.

“Term” has the meaning specified in Section 1.3(b).

“Unit” shall mean the generation assets described in Appendix C (including any Alternate Units), from which Product is provided by Seller to Buyer.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ADDITIONAL DEFINED TERMS

To the extent that the Parties have selected Flexible Capacity as being “Applicable”, the following definitions shall be utilized in lieu of the corresponding definition, where appropriate, or in addition to the definitions set forth in the above Defined Terms:

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in Appendix B under the column titled “Contract Quantity” which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period and which includes Product which is Flexible Capacity in an amount equal to the aggregate amount identified in Appendix B under the column titled “Flexible Capacity”. All Contract Quantity is Inflexible Capacity except to the extent identified as Flexible Capacity in Appendix B under the column titled “Flexible Capacity”.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR;
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations; and
- (d) flexible capacity resource adequacy attributes for the Unit, including, without limitation, the amount of Unit EFC and MWs associated with Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR;

provided, notwithstanding the foregoing, Capacity Attributes shall exclude intra-month substitution resource adequacy attributes.

“Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the

CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled “Contract Quantity”, which Seller has agreed to provide to Buyer from the Unit for each Showing Month, and which includes Product which is Flexible Capacity in an amount equal to the amount identified in Appendix B. All Contract Quantity is Inflexible Capacity except to the extent identified as Flexible Capacity Appendix C.

“Effective Flexible Capacity” has the meaning set forth in the CAISO Tariff.

“Flexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled “Flexible Capacity” which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are eligible to satisfy a load serving entity’s Flexible RAR and which such MWs of Product are associated with MWs of the Unit that are part of the Unit EFC.

“Flexible RAR” means the flexible capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction and includes any non-binding advisory showings which a load serving entity is to make with respect to flexible capacity.

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled “Contract Quantity”, minus the number of MWs of Product set forth in Appendix B under the column titled “Flexible Capacity”, which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are not eligible to satisfy a load serving entity’s Flexible RAR and which are Product associated MWs of the Unit that are not part of or outside the Unit EFC. Inflexible Capacity is also known as ‘generic capacity’.

“Product” means the Capacity Attributes of the Unit, provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area

provided hereunder will not result in a change in payments made pursuant to this Transaction;

- (c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (d) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area; and
- (e) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR whereby the Unit, or a portion of the Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of the Unit related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Unit which previously was not able to satisfy Flexible RAR.

“Unit EFC” means the Effective Flexible Capacity (in MWs) of the Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

“Unit EFC Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**APPENDIX B
FLEXIBLE CAPACITY, DELIVERY PERIOD, CONTRACT QUANTITY,
CONTRACT PRICE, AND FULL FLOATING INDEPENDENT AMOUNT**

The quantities specified in this table will control in the event of a conflict between these values and those in Appendix C. The Parties agree to revise the Appendix C as necessary to ensure that the Contract Quantity and Flexible Capacity are satisfied in full.

Buyer	Silicon Valley Clean Energy Authority, a California joint powers authority
Seller	Southern California Edison Company

Flexible Capacity	<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> Not applicable
Delivery Period	[REDACTED] inclusive.	

Showing Month	Year	Contract Quantity (MW)	Flexible Capacity (MW)	Contract Price (\$/kW-month)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Full Floating Independent Amount (\$)	[REDACTED]
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**APPENDIX C
UNIT INFORMATION AND CONTRACT QUANTITY UNIT ALLOCATION**

Unit 1 Information

Unit	1
CAISO Resource ID	MOSSLD_2_PSP2
Unit Name	MOSS LANDING POWER BLOCK 2
Current Scheduling Coordinator SCID	DYN1
Resource Fuel Type	Thermal
Resource Category (1, 2, 3 or 4)	4
Unit EFC Category (1, 2, 3 or N/A)	N/A
Local Capacity Area (if applicable, as of Confirmation Effective Date)	Bay Area

Unit 1 Contract Quantity Unit Allocation

	Unit NQC ⁽¹⁾	Unit EFC ⁽²⁾	2022 Contract Quantity	2022 Flexible Capacity

- (1) Unit NQC (Net Qualifying Capacity in MW as of the Confirmation Effective Date)
- (2) If Flexible Capacity is designated as applicable in Section 1.1,
Unit EFC (Effective Flexible Capacity in MW, as of the Confirmation Effective Date)

**APPENDIX D
SUPPLY PLAN INFORMATION**

Benefitting load serving entity SCID: LSVCE

Counterparty Supply Plan contact information:

Name: Mark Thomas

Email: mthomas@acespower.com

Phone Number: (317) 344-7136

SCE Supply Plan contact information:

Name: Angelica Sindelar

Email: Angelica.Sindelar@sce.com

Phone Number: 626-302-9576

**APPENDIX E
SUBSEQUENT SALE INFORMATION**

Contract Key ID:	
Subsequent sale contract quantity (in MW):	
Subsequent sale delivery period:	
Amount of Inflexible Capacity included in subsequent sale contract quantity (in MW):	
New benefitting load serving entity SC identification number:	

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY
AND
SOUTHERN CALIFORNIA EDISON COMPANY**

This Confirmation Letter including all appendices hereto (“Confirmation”) confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority (“Counterparty” or “Buyer”) and Southern California Edison Company (“SCE” or “Seller”), each individually a “Party” and together the “Parties”, dated as of 10/28/2020 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties, effective as of February 7, 2018, along with the Cover Sheet, any amendments and annexes thereto (the “Master Agreement”), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are referred to collectively herein as the “Collateral Annex”) (the Master Agreement and the Collateral Annex shall be collectively referred to as the “EEI Agreement”). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

ARTICLE 1. TRANSACTION TERMS

1.1 Product: Elections

Product: The product, including the Capacity Attributes of the Unit(s), as defined in Appendix C, or Alternate Unit(s) provided in accordance with Section 2.3.

Flexible Capacity: The Product shall include Flexible Capacity if identified in Appendix B as applicable.

1.2 Delivery and Receipt of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller the Product in the amount of the applicable Contract Quantity for each month of the Delivery Period.

1.3 Delivery Period and Term

- (a) Delivery Period. The Delivery Period is as specified in Appendix B of this Confirmation in the row titled “Delivery Period”, unless terminated earlier in accordance with the terms of this Agreement.
- (b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.4 Contract Quantity

The Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled “Contract Quantity.”

1.5 Flexible Capacity

If the Parties have designated Flexible Capacity as “Applicable”, then the Flexible Capacity included in the Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled “Flexible Capacity.”

1.6 Contract Price

The Contract Price means, for any Showing Month, the price specified in Appendix B of this Confirmation under the heading titled “Contract Price,” for such Showing Month.

ARTICLE 2. DELIVERY OBLIGATIONS**2 Seller’s Delivery Obligations**

Seller shall provide Buyer with the Expected Contract Quantity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing deadline applicable for the Showing Months as specified in Sections 1.4 and 1.5 herein, in accordance with the CAISO Tariff, identifying and confirming the transfer of the Expected Contract Quantity of Product to Buyer for each Showing Month.

- (b) Seller shall or shall cause the Unit’s SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the initial Compliance Showing deadline for each Showing Month, confirming that Buyer will be specified as the recipient of the Expected Contract Quantity for such Showing Month in the Unit’s SC Supply Plan (such notice, the “Expected Contract Quantity Notice”). For illustrative purposes only, as of the Confirmation Effective Date, the applicable Compliance Showing deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Term.
- (c) If Seller is delivering Product to Buyer from more than one Unit, Seller shall deliver such Product to Buyer from each Unit in accordance with the Contract Quantity Unit Allocation, as set forth in Appendix C; provided, Seller may modify the Contract Quantity Unit Allocation from time to time by providing email notice to Buyer’s Supply Plan contact, as set forth in Appendix D, no later than the initial Compliance Showing deadline for each Showing Month.

2 Adjustments to Contract Quantity

Seller shall deliver to Buyer the Contract Quantity of Product for each Showing Month consistent with the following:

- (a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Buyer, no later than fifteen (15) Business Days before the initial deadline for the Compliance Showing applicable to that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the CAISO Tariff.
- (b) Reductions in Unit NQC and Unit EFC: Seller’s obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Confirmation Effective Date as determined by the CAISO. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Alternate Units, provided, that in each case Seller provides and identifies such Alternate Units in accordance with Section 2.3.

23 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity in accordance with Section 2.2 for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Buyer of its intent to provide Product from and identify alternate units that (i) are like-for-like units similar to the Unit originally identified in Appendix C and have the same Capacity Attributes of the Unit originally identified in Appendix C, including the Resource Category and the Unit EFC Category; provided, an alternate unit may constitute a like-for-like unit if the Local Capacity Area for such alternate unit is any PG&E Other local capacity area; (ii) are accepted by the CAISO, and (iii) otherwise that satisfy the requirements of this Agreement (“Alternate Units”), meeting the above Contract Quantity requirements no later than fifteen (15) Business Days before the initial deadline for Buyer’s Compliance Showing related to such Showing Month;
- (b) Seller shall, or shall cause the Unit’s SC to submit a Monthly Supply Plan and an Annual Supply Plan, as applicable, that includes the Alternate Units, in accordance with the CAISO Tariff, no later than fifteen (15) Business Days before the initial Compliance Showing deadline for the applicable Showing Month;
- (c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month, then any such Alternate Units shall not be deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Alternate Units that meet the requirements of this Section 2.3, then any such Alternate Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

24 Damages for Failure to Provide Capacity

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any Showing Month, in accordance with Section 2.1 (the “Replacement Obligation”), in each case as applicable, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace all or any portion of the Replacement Obligation for the applicable Showing Month with capacity having equivalent Capacity Attributes as the Expected Contract Quantity;

provided, if, using commercially reasonable efforts, Buyer is unable to acquire capacity having equivalent Capacity Attributes for any portion of any Showing Month, Buyer may replace such portion of the Replacement Obligation with capacity having Capacity Attributes in excess of the Contract Quantity (the “Replacement Capacity”). Buyer may enter into purchase transactions with one or more parties to purchase Replacement Capacity. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner to minimize damages in procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, including any transaction costs and expenses incurred in connection with such procurement, plus (B) each applicable Replacement Capacity Price multiplied by the aggregate amount of Replacement Obligation neither provided by Seller as Alternate Capacity nor purchased by Buyer as Replacement Capacity, for all applicable portions of the applicable Showing Month pursuant to Section 2.4(a), and (ii) the Replacement Obligation minus the Alternate Capacity, not provided for all applicable portions of the applicable Showing Month times the Contract Price for that month. Buyer’s invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and shall include supporting documentation.

5 Indemnities for Failure to Deliver Expected Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller’s failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;
- (b) Seller’s failure to provide notice of the non-availability of any portion of the Expected Contract Quantity for any portion of the Delivery Period as required under Section 2.2;
- (c) Seller’s or the Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Expected Contract Quantity for each Unit purchased hereunder for each Showing Month of the Delivery Period;
- (d) Seller’s or the Unit’s SC’s failure to submit accurate Supply Plans that

identify Buyer's right to the Expected Contract Quantity for each Unit purchased hereunder for each Showing Month of the Delivery Period; or

- (e) any other failure by Seller to perform its obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties.

6 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation, in accordance with Applicable Laws and CPUC Decisions ("Resold Product"); provided, with respect to Resold Product that includes the sale of Capacity Attributes that impact Seller's obligations under this Confirmation, Buyer agrees to: (a) notify Seller that such a sale has occurred; (b) provide Seller with the information described in Appendix E; and (c) notify Seller of any subsequent changes to the information in Appendix E with respect to any particular sale; in each case promptly following such sale and in no event later than the initial Compliance Showing deadline for each Showing Month. Subject to Article 6 below, Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product; and (ii) take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product.

Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 2.4 and 2.5, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser. Buyer acknowledges and agrees that with respect to any Resold Product, if Seller incurs any liability to any purchaser of such Resold Product due to the failure of Buyer to comply with the terms of this Confirmation, and Buyer would have had liability to Seller under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Buyer shall be liable to Seller under this Confirmation for the amounts it would have been liable to Seller for had such Resold Product not been sold to a subsequent purchaser.

7 CAISO Offer Requirements

Seller shall, or cause each Unit's SC to, schedule with, or make available to, the CAISO the Expected Contract Quantity for each Unit in compliance with the CAISO Tariff, and shall, or shall cause each Unit's SC, owner, or operator, as

applicable, to perform all obligations under the CAISO Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

2 Unit SC's Substitution Obligation

After the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit's SC for a Showing Month in accordance with the CAISO Tariff, and if the CAISO determines that any portion of the Expected Contract Quantity for any portion of a Showing Month that was shown by Buyer in its Compliance Showings requires outage substitution in accordance with Section 40.9.3.6 of the CAISO Tariff because the Unit, or Alternate Unit, as applicable, is scheduled to take an outage (planned or otherwise) (such amount requiring outage substitution, the "SC Substitute Capacity"), then: (a) Seller shall have no liability under Sections 2.4 or 2.5 with respect to such SC Substitute Capacity; and (b) Seller shall have no liability to Buyer for any costs that are allocated to Buyer by the CAISO for any CPM Capacity procured by the CAISO pursuant to the Capacity Procurement Mechanism and that are related to such SC Substitute Capacity.

ARTICLE 3. PAYMENT

3.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly Payment to Seller, after the applicable Showing Month, as follows:

$$\text{Monthly Payment} = (A \times B \times 1,000)$$

where:

A = applicable Contract Price for that Showing Month

B = The amount of Contract Quantity of Product actually delivered by Seller to Buyer pursuant to and consistent with Section 2.1 and, if applicable, Section 2.3, for the applicable Showing Month.

The Monthly Payment calculation shall be rounded to two decimal places.

3.2 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) energy sales, and (iii) any revenues for black start or reactive power services.

- (b) Buyer shall be entitled to receive and retain all revenues associated with the Aggregate Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(iii)). To the extent permitted by the CAISO Tariff, Seller shall, or shall cause each Unit's SC to, submit RUC Availability Bids for the Expected Contract Quantity for each Unit for each hour of the Delivery Period at a bid price of Zero Dollars (\$0) per MW per hour, regardless of whether each Unit is shown on a Supply Plan for the applicable Showing Month.
- (c) In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,
 - (i) all such Buyer revenues described in this Section 3.2, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity; and
 - (ii) all such Seller, or a Unit's SC, owner, or operator revenues described in this Section 3.2, but received by Buyer shall be remitted to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each Showing Month provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

3.3 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party.

ARTICLE 4. OTHER BUYER AND SELLER COVENANTS

4 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period: (a) cause the Benefiting Load Serving Entity SCID to be included in all applicable Supply Plans; (b) execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Aggregate Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Section 2.6; and (c) cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. If during the Delivery Period, there is a change to the Benefiting Load Serving Entity SCID, the Parties agree to communicate such changes to each other promptly. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Authority having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

4 Seller's Representations, Warranties and Covenants

- (a) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
 - (i) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (ii) No portion of the Aggregate Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
 - (iii) Seller shall comply with Applicable Laws relating to the Product;
 - (iv) (A) Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from the CAISO) notify Buyer in the event the CAISO

designates any portion of the Aggregate Contract Quantity as CPM Capacity and (B) in the event the CAISO makes such a designation Seller shall, and shall cause the Unit's SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation;

- (v) Buyer shall have the exclusive right to offer the Aggregate Contract Quantity, or any portion thereof, to the CAISO as CPM Capacity and Seller shall not, and shall cause the Unit's SC not to, offer any portion of the Aggregate Contract Quantity to the CAISO as CPM Capacity or accept any designation of any portion thereof as CPM Capacity;
- (vi) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (vii) Seller shall cause the Unit's SC, owner and operator to comply with Applicable Laws relating to the Product;
- (viii) Buyer shall have no liability for the failure of Seller or the failure of the Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.
- (ix) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit does not exceed the Unit NQC or Unit EFC for that Unit;
- (x) Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, with respect to each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff and this Confirmation;
- (xi) Seller has notified the SC of the Unit that Seller is obligated to cause the Unit's SC to provide to the Buyer, at least fifteen (15) Business Days before the initial deadline for each Compliance Showing, the applicable Expected Contract Quantity of the Unit for such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (xii) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

- (b) If the Parties have designated Flexible Capacity as "Applicable", then the

following representation and warranty shall apply to Seller throughout the Delivery Period:

- (i) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit and which are eligible to satisfy a load serving entity's Flexible RAR, does not exceed the Unit EFC for that Unit.
- (c) Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, all of the information set forth on Appendix C hereto is true, correct and complete.
- (d) If the Parties have designated Flexible Capacity as "Applicable", then Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, the CAISO has given the Unit the Unit EFC set forth on Appendix C hereto.

ARTICLE 5. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that: (i) Buyer may disclose the Aggregate Contract Quantity or any applicable portion of the Aggregate Contract Quantity, including any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable, under this Transaction to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable; (ii) Seller may disclose the transfer of the Aggregate Contract Quantity and the applicable Contract Quantity and Expected Contract Quantity (as well as any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable) for each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; (iii) both Parties may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the Independent Evaluator; and (iv) Buyer and the Independent Evaluator may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the California Energy Commission, and participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Aggregate Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

ARTICLE 6. HOLDBACK

No later than five (5) Business Days before the deadline for the initial Compliance Showing deadline with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Unit's SC not to list, a portion or all of a Unit's applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 2.1 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.4 or 2.5. Seller shall, or shall cause the Unit's SC to, comply with Buyer's request under this Article 6.

ARTICLE 7. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with FERC Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42. Seller also agrees that it will not, in any filings, if any, made subject to FERC Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 8. COLLATERAL REQUIREMENTS**8.1 Counterparty Collateral Requirements**

Notwithstanding anything to the contrary contained in the EEI Agreement, Counterparty shall, no later than five (5) Business Days after the Confirmation Effective Date, provide to, and maintain with, SCE a Full Floating Independent Amount as long as Counterparty or its Guarantor, if any, does not maintain Credit Ratings of at least (a) BBB- from S&P and Baa3 from Moody's, if such entity is rated by the Ratings Agencies, or (b) BBB- by S&P or Baa3 by Moody's if such entity is rated by only one Ratings Agency. The Full Floating Independent Amount shall equal the value set forth in Appendix B of this Confirmation. Commencing after the initial Compliance Showing deadline of the first Showing Month of the Delivery Period, and for each initial Compliance Showing deadline during the Delivery Period thereafter, the Full Floating Independent Amount shall be reduced to twenty percent (20%) of the sum of the FFIA Monthly Payments for the Next Showing Month and all remaining months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Full Floating Independent Amount for Counterparty shall be added to the Exposure Amount for SCE and subtracted from the Exposure Amount for Counterparty.

For the purposes of calculating Exposure, the Monthly Payment shall be deemed accrued and payable upon the initial Compliance Showing deadline for the applicable Showing Month.

8.2 Current Mark-To-Market Value

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy Capacity product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction.

8.3 Credit Terms

The Parties agree that the credit and collateral provisions of the EEI Agreement shall govern this Transaction; provided, however, that for purposes of calculating a Party's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, with respect to this Transaction only (a) if Counterparty has Exposure to SCE, then the amount of Exposure for this Transaction is deemed to be zero dollars (\$0), and (b) in no event shall SCE be required to post or maintain an Independent Amount with Counterparty.

ARTICLE 9. OTHER

9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement, provided that, with respect to this Transaction only, the following language is added at the end of Section 5.2 of the Master Agreement, with any terms which are defined in this Confirmation being used in the Master Agreement with the definitions given to such terms in this Confirmation:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any Governmental Authority having jurisdiction, because Buyer is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties or fines, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining

and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

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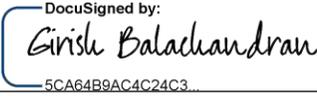
In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date first written:

**SILICON VALLEY CLEAN ENERGY
AUTHORITY,**

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a California joint powers authority.

a California corporation.

By: 
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By: 
427251C63195416...

Name: Girish Balachandran

Name: Gus Flores

Title: Chief Executive Officer

Title: Principal Manager, Contract Origination

Date: 10/27/2020

Date: 10/28/2020

APPENDIX A DEFINED TERMS

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in Appendix B under the column titled “Contract Quantity” which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period.

“Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Alternate Capacity” means Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.

“Alternate Unit” means a generating unit meeting the requirements specified in Section 2.3.

“Annual Supply Plan” has the meaning set forth in the CAISO Tariff.

“Applicable Laws” means the CAISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project, the Unit or the terms of this Agreement.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Benefiting Load Serving Entity SCID” is as specified in Appendix D.

“Buyer” has the meaning specified in the introductory paragraph of this Confirmation.

“CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

“CAISO Control Area” has the meaning set forth in the CAISO Tariff.

“CAISO Controlled Grid” has the meaning as set forth in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligation;

provided that, notwithstanding the foregoing, Capacity Attributes shall exclude all flexible capacity resource adequacy attributes, characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled associated with the Unit; provided further, notwithstanding the foregoing, Capacity Attributes shall exclude intra-month substitution resource adequacy attributes.

“Capacity Procurement Mechanism” has the meaning set forth in the CAISO Tariff.

“Collateral Annex” has the meaning specified in the introductory paragraph of this Confirmation.

“Compliance Obligations” means the RAR and Local RAR.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings) and (b) RAR compliance or advisory showings (or similar or successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Price” means, for any Showing Month, the price specified in Appendix B under the column titled “Contract Price” for such Showing Month.

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled “Contract Quantity”, which Seller has agreed to provide to Buyer from the Unit for each Showing Month.

“Contract Quantity Unit Allocation” means, if Seller is delivering Product to Buyer from more than one Unit, the allocation of Contract Quantity Seller will deliver from each Unit, as set forth in Appendix C and as modified by Seller from time to time in accordance with Section 2.1(c).

“Cover Sheet” has the meaning specified in the introductory paragraph of this Confirmation.

“CPM Capacity” has the meaning set forth in the CAISO Tariff.

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Current Mark-to-Market Value” has the meaning specified in Section 8.2

“Delivery Period” has the meaning specified in Section 1.3(a).

“EI” has the meaning specified in the introductory paragraph of this Confirmation.

“EI Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and after giving effect to any reductions to Contract Quantity as specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“Expected Contract Quantity Notice” has the meaning specified in Section 2.1(b).

“FFIA Monthly Payment” shall be the Monthly Payment calculated using the Contract Quantity rather than the Expected Contract Quantity, such that variable B in the formula for Monthly Payment shall be as follows: $B = \text{the Contract Quantity of Product for each applicable Showing Month}$.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive,

judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

“Local Capacity Area” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Monthly Payment” has the meaning specified in Section 3.1.

“Monthly Supply Plan” has the meaning set forth in the CAISO Tariff.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Next Showing Month” means the next calendar month for which a Compliance Showing will be made.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Planned Outage” means, an Approved Maintenance Outage (as defined in the CAISO Tariff), but does not include a RA Maintenance Outage With Replacement (as defined in the CAISO Tariff), a Short-Notice Opportunity RA Maintenance Outage (as defined in the CAISO Tariff) or an Off-Peak Opportunity RA Maintenance Outage (as defined in the CAISO Tariff).

“Product” means the Capacity Attributes of the Unit(s), including any capacity from RMR Contracts for the applicable Unit, or its successor, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor; provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or

increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and

- (c) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“Replacement Capacity” has the meaning specified in Section 2.4.

“Replacement Capacity Price” means the market price for Product with Capacity Attributes reasonably equivalent to the quantity of Product not provided by Seller under this Confirmation, as determined in the manner upon which market prices are determined under Section 5.2(b) of the Master Agreement. For purposes of this Transaction and Confirmation, the “Replacement Capacity Price” shall be deemed to be the “Replacement Price” as defined in Section 1.51 of the Master Agreement.

“Replacement Obligation” has the meaning specified in Section 2.4.

“Resold Product” has the meaning specified in Section 2.6.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“RMR Contracts” has the meaning set forth in the CAISO Tariff.

“RUC Availability Bid” has the meaning set forth in the CAISO Tariff.

“RUC Availability Payment” has the meaning set forth in the CAISO Tariff.

“SC” has the meaning set forth in the CAISO Tariff.

“SC Substitute Capacity” has the meaning set forth in Section 2.8.

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“Term” has the meaning specified in Section 1.3(b).

“Unit” shall mean the generation assets described in Appendix C (including any Alternate Units), from which Product is provided by Seller to Buyer.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ADDITIONAL DEFINED TERMS

To the extent that the Parties have selected Flexible Capacity as being “Applicable”, the following definitions shall be utilized in lieu of the corresponding definition, where appropriate, or in addition to the definitions set forth in the above Defined Terms:

“Aggregate Contract Quantity” means the aggregate amount of Product associated with the MWs set forth in Appendix B under the column titled “Contract Quantity” which Seller has agreed to provide to Buyer from the Unit throughout the entire term of the Delivery Period and which includes Product which is Flexible Capacity in an amount equal to the aggregate amount identified in Appendix B under the column titled “Flexible Capacity”. All Contract Quantity is Inflexible Capacity except to the extent identified as Flexible Capacity in Appendix B under the column titled “Flexible Capacity”.

“Capacity Attributes” means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR;
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations; and
- (d) flexible capacity resource adequacy attributes for the Unit, including, without limitation, the amount of Unit EFC and MWs associated with Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR;

provided, notwithstanding the foregoing, Capacity Attributes shall exclude intra-month substitution resource adequacy attributes.

“Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the

CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled “Contract Quantity”, which Seller has agreed to provide to Buyer from the Unit for each Showing Month, and which includes Product which is Flexible Capacity in an amount equal to the amount identified in Appendix B. All Contract Quantity is Inflexible Capacity except to the extent identified as Flexible Capacity Appendix C.

“Effective Flexible Capacity” has the meaning set forth in the CAISO Tariff.

“Flexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled “Flexible Capacity” which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are eligible to satisfy a load serving entity’s Flexible RAR and which such MWs of Product are associated with MWs of the Unit that are part of the Unit EFC.

“Flexible RAR” means the flexible capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction and includes any non-binding advisory showings which a load serving entity is to make with respect to flexible capacity.

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled “Contract Quantity”, minus the number of MWs of Product set forth in Appendix B under the column titled “Flexible Capacity”, which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are not eligible to satisfy a load serving entity’s Flexible RAR and which are Product associated MWs of the Unit that are not part of or outside the Unit EFC. Inflexible Capacity is also known as ‘generic capacity’.

“Product” means the Capacity Attributes of the Unit, provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area

provided hereunder will not result in a change in payments made pursuant to this Transaction;

- (c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (d) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area; and
- (e) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR whereby the Unit, or a portion of the Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of the Unit related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Unit which previously was not able to satisfy Flexible RAR.

“Unit EFC” means the Effective Flexible Capacity (in MWs) of the Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

“Unit EFC Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

**APPENDIX B
FLEXIBLE CAPACITY, DELIVERY PERIOD, CONTRACT QUANTITY,
CONTRACT PRICE, AND FULL FLOATING INDEPENDENT AMOUNT**

The quantities specified in this table will control in the event of a conflict between these values and those in Appendix C. The Parties agree to revise the Appendix C as necessary to ensure that the Contract Quantity and Flexible Capacity are satisfied in full.

Buyer	Silicon Valley Clean Energy Authority, a California joint powers authority
Seller	Southern California Edison Company

Flexible Capacity	<input type="checkbox"/> Applicable	<input checked="" type="checkbox"/> Not applicable
Delivery Period	[REDACTED]	

Showing Month	Year	Contract Quantity (MW)	Flexible Capacity (MW)	Contract Price (\$/kW-month)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Full Floating Independent Amount (\$)	[REDACTED]
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**APPENDIX C
UNIT INFORMATION AND CONTRACT QUANTITY UNIT ALLOCATION**

Unit 1 Information

Unit	1
CAISO Resource ID	GEYS11_7_UNIT11
Unit Name	GEYSERS UNIT 11 (HEALDSBURG)
Current Scheduling Coordinator SCID	CALJ
Resource Fuel Type	Geothermal
Resource Category (1, 2, 3 or 4)	4
Unit EFC Category (1, 2, 3 or N/A)	N/A
Local Capacity Area (if applicable, as of Confirmation Effective Date)	NCNB or PG&E Other

Unit 1 Contract Quantity Unit Allocation

	Unit NQC ⁽¹⁾	Unit EFC ⁽²⁾	2022 Contract Quantity	2022 Flexible Capacity

(1) Unit NQC (Net Qualifying Capacity in MW as of the Confirmation Effective Date)

(2) If Flexible Capacity is designated as applicable in Section 1.1,
Unit EFC (Effective Flexible Capacity in MW, as of the Confirmation Effective Date)

Confidential**Resource Adequacy Capacity Confirmation****SCE – SVCE**Unit 2 Information

Unit	2
CAISO Resource ID	SNMALF_6_UNITS
Unit Name	Sonoma County Landfill
Current Scheduling Coordinator SCID	SCE1
Resource Fuel Type	Biomass
Resource Category (1, 2, 3 or 4)	4
Unit EFC Category (1, 2, 3 or N/A)	N/A
Local Capacity Area (if applicable, as of Confirmation Effective Date)	NCNB or PG&E Other

Unit 2 Contract Quantity Unit Allocation

	Unit NQC ⁽¹⁾	Unit EFC ⁽²⁾	2022 Contract Quantity	2022 Flexible Capacity

- (1) Unit NQC (Net Qualifying Capacity in MW as of the Confirmation Effective Date)
- (2) If Flexible Capacity is designated as applicable in Section 1.1,
Unit EFC (Effective Flexible Capacity in MW, as of the Confirmation Effective Date)

Unit 3 Information

Unit	3
CAISO Resource ID	GYS7X8_7_UNITS
Unit Name	GEYSERS UNITS 7 & 8 AGGREGATE
Current Scheduling Coordinator SCID	CALJ
Resource Fuel Type	Geothermal
Resource Category (1, 2, 3 or 4)	4
Unit EFC Category (1, 2, 3 or N/A)	N/A
Local Capacity Area (if applicable, as of Confirmation Effective Date)	NCNB or PG&E Other

Unit 3 Contract Quantity Unit Allocation

	Unit NQC ⁽¹⁾	Unit EFC ⁽²⁾	2022 Contract Quantity	2022 Flexible Capacity

- (1) Unit NQC (Net Qualifying Capacity in MW as of the Confirmation Effective Date)
- (2) If Flexible Capacity is designated as applicable in Section 1.1,
Unit EFC (Effective Flexible Capacity in MW, as of the Confirmation Effective Date)

**APPENDIX D
SUPPLY PLAN INFORMATION**

Benefitting load serving entity SCID: LSVCE

Counterparty Supply Plan contact information:

Name: Mark Thomas

Email: mthomas@acespower.com

Phone Number: (317) 344-7136

SCE Supply Plan contact information:

Name: Angelica Sindelar

Email: Angelica.Sindelar@sce.com

Phone Number: 626-302-9576

**APPENDIX E
SUBSEQUENT SALE INFORMATION**

Contract Key ID:	
Subsequent sale contract quantity (in MW):	
Subsequent sale delivery period:	
Amount of Inflexible Capacity included in subsequent sale contract quantity (in MW):	
New benefitting load serving entity SC identification number:	

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY
FOR UNIT-SPECIFIC RESOURCE ADEQUACY PRODUCT**

This confirmation letter (“Confirmation”) confirms the transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership (“Seller”), and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of October 30, 2020 (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation (the “Transaction”). This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall control and shall govern the rights and obligations of the Parties in connection with the Transaction. Except as otherwise specified, references to an “Article” or a “Section” or an “Appendix” mean an Article or Section or Appendix of this Confirmation, as applicable.

**1.
DEFINITIONS**

- 1.1 “Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.2 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.3 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.4 “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.5 “Availability Standards” shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6 “Buyer” has the meaning specified in the introductory paragraph hereof and shall have the same meaning as “Purchaser” under the Master Agreement.
- 1.7 “CAISO” means the California Independent System Operator or its successor.
- 1.8 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.9 “Confirmation” has the meaning specified in the introductory paragraph hereof.

- 1.10 “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.
- 1.11 “Contingent Firm RA Product” has the meaning specified in Section 3.4 hereof.
- 1.12 “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.13 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).
- 1.14 “Control Area” has the meaning set forth in the Tariff.
- 1.15 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.
- 1.16 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.17 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.18 “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.19 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.20 “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.21 “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in payments and Seller’s obligations will be adjusted or reduced as set forth in Section 4.4(e).
- 1.22 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.23 “Firm RA Product” has the meaning specified in the Section 3.3 hereof.
- 1.24 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

- 1.25 “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.
- 1.26 “Force Majeure” has the same meaning as “Uncontrollable Forces” under the Master Agreement.
- 1.27 “GADS” means the Generating Availability Data System or its successor.
- 1.28 “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.29 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.30 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.31 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.32 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.33 “LRA” has the meaning set forth in the Tariff.
- 1.34 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.37 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.38 “NERC” means the North American Electric Reliability Council, or its successor.
- 1.39 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.40 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

- 1.41 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.42 “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
- 1.43 “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.44 “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.
- 1.45 “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.46 “Product” has the meaning specified in Article 3 hereof.
- 1.47 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.48 “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.49 “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.50 “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
- 1.51 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.52 “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.53 “Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.
- 1.54 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.55 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.56 “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.57 “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC

Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.58 “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
- 1.59 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.60 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.61 “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.62 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.63 “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.64 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Geysers Units 14 & 16

Location: Middletown, CA

CAISO Resource IDs: GEYS14_7_UNIT14; GEYS16_7_UNIT16

Resource Type: I_Phys_Rec

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid (“Substation”): Fulton Substation (PG&E)

Path 26 (North, South or None): North

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:
None

Run Hour Restrictions: None

LAR Attributes (Yes/No): Yes

If yes: Local Capacity Area (as of Confirmation Effective Date):

Product Type (Flexible/Generic):

If Generic: Unit NQC (as of the Confirmation Effective Date):

GEYS14_7_UNIT14: ██████████

GEYS16_7_UNIT16: ██████████

If Flexible: Unit EFC (as of the Confirmation Effective Date):

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date):

3.

RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified by checking the title box in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified by checking the title boxes in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with the FCR Attributes from the Unit in an amount calculated for each Monthly Delivery Period as follows: (Contract Quantity / Unit NQC) x Unit EFC

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with

Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.5 CAISO Revenues

Seller shall retain any and all revenues received from the CAISO with respect to the Transaction contemplated by this Confirmation or with respect to any other capacity, energy, ancillary services or other products provided by or from the Unit.

**4.
DELIVERY AND PAYMENT**

4.1 Delivery Period

The Delivery Period shall be [REDACTED] through [REDACTED], inclusive; provided however that the Delivery Period shall end earlier if this Transaction terminates pursuant to Article 6. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Years	Contract Quantity (MWs)
[REDACTED]	[REDACTED]

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract

Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) Change in Law Regarding Flexible RA: If the Product is Contingent Firm RA Product that includes FCR Attributes, Seller's obligation to provide FCR Attributes for the Unit in any Showing Month may be reduced or adjusted by Seller if the CPUC, CAISO, or other Governmental Body changes or eliminates the Flexible Capacity Requirements. Such changes include but are not limited to defining new or re-defining Unit EFC, Effective Flexible Capacity, FCR, FCR Attributes, and/or FCR Showings, such that flexible capacity is no longer required for compliance, or which results in changes to how the Units are counted towards such requirements. To the extent any such changes occur during the Delivery Period, Seller may reduce the amount of FCR Attributes provided to Buyer from the Unit on a pro rata basis based on the overall size (in MWs) of the Unit. For example, if Seller designates a Unit or Replacement Unit which has an overall Unit NQC of 100 MW and Unit EFC of 100 MW, Seller's allocation of FCR Attributes associated with the 8 MW Contract Quantity shall be 8% of the Unit EFC (8/100). If a change in law causes the same Unit with a 100 MW Unit NQC to eligible for only 50 MW of Unit EFC, then Buyer's allocation of FCR Attributes would be reduced on a pro rata basis to 4 MW (i.e. 8% of the Unit's 50 MW of Unit EFC). The Parties acknowledge and agree that any such change to the FCR Attributes shall not (i) entitle Buyer to a change in the Contract Price or a change in the amounts payable under Section 4.9, (ii) result in any change to the Contract Quantity, (iii) give either Party the right to terminate this Agreement, or (iv) allow for the severability of any provisions of this Confirmation pursuant to the Master Agreement.

- (e) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).
- (f) Force Majeure: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced at Seller's option if the Unit or transmission to the Delivery Point is affected by Force Majeure. If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of Force Majeure, Seller has the option, but not the obligation, to provide Alternate Capacity for such Showing Month from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5. For purposes of this Confirmation, Seller may apportion the effects of a Force Majeure among Buyer and Seller's other customers purchasing substantially the same product from the Unit on a pro rata basis or such other basis as Seller reasonably determines to be equitable.

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article 6 of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article 6 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY PRICE TABLE

Contract Years	RA Capacity Flat Price (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and

Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

**5.
CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

**6.
EARLY TERMINATION**

The Parties have entered into a separate agreement for the purchase and sale of renewable energy from the Units, which is dated concurrently with the Confirmation Effective Date (the "RPS Agreement"). The Parties agree that in the event the RPS Agreement terminates, Seller shall have 30 days to provide written notice to Buyer that it is terminating this Transaction. Seller's termination pursuant to this Article 6 will not be deemed an Event of Default by the Seller and Seller shall not be subject to damages or ongoing obligations as a result of such termination, including, but not limited to, the damages specified in Article 5 of the Master Agreement.

**7.
OTHER BUYER AND SELLER COVENANTS**

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (f) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (g) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (h) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (i) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (j) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8.
BUYER LIMITED ASSIGNMENT

Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("Limited Assignee") that has creditworthiness that is equal to or better than the creditworthiness of Buyer (which is Baa2 with Moody's as of the Effective Date) of Buyer's right to receive Product and its obligation to make payments to the Seller, which assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under the Transaction, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed assignment agreement in such form as reasonably agreed between the Parties. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer and Seller's ability to make the representations and warranties contained therein.

9.
CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Buyer may be required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Buyer that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call and letter sent via electronic mail, and/or by overnight carrier. Such notice shall provide a copy of the request and describe the specific information that has been requested. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. If Buyer discloses any such confidential information pursuant to the Act, Buyer will promptly provide notice of such disclosure (and the contents thereof) to Seller, and from and after such disclosure, such disclosed confidential information shall no longer be treated as confidential pursuant to the Master Agreement or this Confirmation. Notwithstanding the foregoing, Buyer may release confidential information without advance notice to or over the objection of Seller if Buyer's legal counsel delivers a written legal opinion to Buyer that Buyer is required by law to release such confidential information, and Buyer delivers such legal opinion to Seller.

**10.
BUYER'S RE-SALE OF PRODUCT**

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.
- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

**11.
MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**12.
COLLATERAL REQUIREMENTS**

Notwithstanding anything herein or in the Master Agreement to the contrary, neither Party shall be required to post collateral or other security in connection with this Transaction.

**13.
NO RECOURSE TO MEMBERS OF BUYER**

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

13.

COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

14.

ENTIRE AGREEMENT, NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[SIGNATURE PAGE FOLLOWS]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

Silicon Valley Clean Energy Authority

DS
RL

DocuSigned by:
Alexandre B. Makler

DocuSigned by:
Girish Balachandran

By: _____
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By: _____
5CA64B9AC4C24C3

Name: Alexandre B. Makler

Name: Girish Balachandran

Title: Vice President

Title: Chief Executive Officer

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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **OhmConnect**, Inc, a Delaware corporation (“Seller”) and **Silicon Valley Clean Energy** Authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of October 28, 2020 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated January 25, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 **TRANSACTION TERMS**

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

Firm RA Product:

Seller shall provide Purchaser with the Product from the Portfolio in the amount of the Contract Quantity. If Seller is not able to provide the full amount of the Contract Quantity from the Portfolio for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Portfolio in the amount of the Contract Quantity. If Seller is not able to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Portfolio in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If Seller is not able to provide the full amount of the Contract Quantity from the Portfolio as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Portfolio and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for each day of the Delivery Period is firm and will not be excused for any reason except as excused by an express provision of this Agreement.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Portfolio's SC to submit, on a timely basis with respect to Purchaser's annual filing and for each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. In accordance with the CPUC RA Filing Guide, Seller and Buyer shall report the DR Load Impact Value on the applicable reports. The DR Load Impact Value shall be adjusted by T&D Line Loss Factors and the 15% Planning Reserve Margin adder. The total amount of Product identified and confirmed for each day of such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller may sell and deliver Product from each Shown Unit that meets the requirements set forth in Appendix B. In no event shall any Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific Proxy Demand Resource or other specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month and, if applicable, annual filing.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan

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for validation before the applicable deadline for the Showing Month and, if applicable, annual filing.

- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product (i) from a Shown Unit if Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) if Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 Reductions in Contract Quantity

If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Portfolio during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Portfolio that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each day of each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any day of a Showing Month from a resource other than

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those Units in the Portfolio, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Portfolio and any Replacement Unit(s) for each day of the Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity from and identify replacement units that (i) have the same Capacity Attributes of the Units in the Portfolio originally identified in Appendix B, (ii) are accepted by the CAISO, and (iii) otherwise that satisfy the requirements of this Agreement (each such unit, a “Replacement Unit”), no later than the Notification Deadline for Purchaser’s Compliance Showings related to such Showing Month and, if applicable, annual filing;
- (b) Seller shall, or shall cause the Portfolio’s SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser’s Compliance Showings; and
- (c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

The designation of any Replacement Unit(s) by Seller shall not require Purchaser’s approval so long as such Replacement Unit(s) meet the “product” parameters in Appendix B.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, then any such Replacement Units shall be deemed part of the Portfolio for purposes of this Confirmation for that Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D (“Planned Outage Schedule”) for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser’s receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser’s requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

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2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that no such re-sale shall increase Seller's obligations hereunder other than as set forth in this Section 2.6(a) or require Seller to have any obligation to a Subsequent Purchaser. For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Portfolio's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Portfolio's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Portfolio's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.

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- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Portfolio's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Portfolio's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3
PAYMENTS

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that, notwithstanding Section 9.4 of the WSPP Agreement, if an invoice or portion thereof is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Purchaser shall make a monthly payment to Seller for Product delivered hereunder by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, or if the twentieth (20th) day is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the amount of Contract Quantity of Product actually delivered by Seller to Purchaser pursuant to and consistent with Section 2.1 and, if applicable, Section 2.3, for the applicable Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places).

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its

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successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4

OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

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

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction. Seller's reasonable and documented third party costs associated with taking

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commercially reasonable actions under this Section 4.2 for the benefit of Subsequent Purchasers shall be reimbursed by Purchaser.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for each Shown Unit during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity or, if applicable, the Shown Unit's Effective Flexible Capacity;
- (d) if applicable, Seller has notified either the Portfolio's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Portfolio's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Portfolio's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

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ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith and with commercially reasonable practices, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose information as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254

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and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information and Purchaser notifies Seller ahead of such release.

5.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can continue to perform their obligations regarding the purchase and sale of the Product sold hereunder in a manner that best maintains their respective original intentions.

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5.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.7 No Recourse to Members of Purchaser

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

5.8 [Reserved]

5.9 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

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- (c) Section 22.3(c) of the WSPP Agreement is amended by deleting the third sentence thereof and replacing it with the following:

“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

- (e) In Section 22.3(f), delete the entire provision and replace with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

- (g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.

- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND

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ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.

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- (l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

5.10 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.11 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

OhmConnect, Inc. a Delaware corporation

Silicon Valley Clean Energy Authority, a California joint powers authority

By: 

Girish Balachandran
By: _____

Name: Matt Duesterberg

Name: Girish Balachandran

Title: CRO

Title: CEO

Approved as to form:

By: _____

Name:

Title:

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month and, if applicable, annual filing.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“Effective Flexible Capacity” has the meaning set forth in the Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to such day, less any reductions to Contract Quantity for such day consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

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

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning set forth in the Tariff.

“Notification Deadline” is ten (10) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month and, if applicable, annual filing.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Portfolio” means the aggregated group of Proxy Demand Resources and, as applicable, other resources providing the Product under this Confirmation, consisting of Units and Replacement Units. The Shown Units in the Portfolio may be removed and replaced by Seller from time to time in accordance with the requirements of this Confirmation.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Proxy Demand Resource” or “PDR” has the meaning set forth in the Tariff.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a Proxy Demand Resource or other resource meeting the requirements specified in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means any Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

“Unit” means the Proxy Demand Resources described in Appendix B, as may be modified by Seller from time to time after the Effective Date to remove and/or replace Units with Replacement Units. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

**APPENDIX B-2-1
PORTFOLIO INFORMATION**

The following describes the Portfolio.

Portfolio Specific Information	
Resource Name	OHMCO DR
CAISO Resource ID	Multiple
SCID of Resource	OHM1
Minimum Portfolio NQC by month (in MW)	
Portfolio EFC by month	Not Applicable
TAC Area	PG&E or CAISO System, as agreed by the Parties
Capacity Area	CAISO System
Resource Category as defined by the CPUC	DR

[Information for specific Shown Units may be provided after the Effective Date in accordance with the Agreement.]

Resource Name	(if other than DR)
Resource Type	
Shown Unit Specific Information	
CAISO Resource ID	
SCID of Resource	(if other than ____)
Physical Location	
Unit NQC by month (e.g., Jan =50, Feb =65) (in MW)	
Resource Category as defined by the CPUC	(if other than DR)
Resource Fuel Type	(if other than DR)

**APPENDIX B-1-2
PRODUCT AND UNIT INFORMATION**

Product: RAR

Delivery period: [REDACTED]

Contract Quantity and Contract Price:

Showing Month and Year	RAR Contract Quantity (MW)	Contract Price (\$/kW-mo)
[REDACTED]		

**APPENDIX C
NOTICE INFORMATION**

Seller: OhmConnect, Inc	Purchaser: Silicon Valley Clean Energy Authority, a California joint powers authority
All Notices: Attn: OhmConnect Phone: 844.646.2664 Facsimile: N/A Duns: ██████████ Federal Tax ID Number: ██████████	All Notices: Attn: Girish Balachandran, CEO Phone: 408 721-5301 Facsimile: Duns: ██████████ Federal Tax ID Number: ██████████
Invoices: Attn: Finance Phone: 844.646.2664 Facsimile: N/A E-mail: finance@ohmconnect.com	Invoices: Attn: SVCE Power Settlements Phone: 408 721-5301 Facsimile: E-mail: SVCEpowersettlements@svcleanenergy.org
Scheduling: Attn: Energy Markets Tel: 844.646.2664 Email: markets@ohmconnect.com	Scheduling: Attn: Z-Global Tel: (916) 221-4327 Email: eric@zglobal.biz
Wire Transfer: BNK: Silicon Valley Bank ABA: ██████████ ACCT: ██████████	Wire Transfer: BNK: River City Bank ABA: ██████████ ACCT: ██████████
Credit and Collections: Attn: OhmConnect A/P Phone: 844.646.2662 Facsimile: N/A E-mail: finance@ohmconnect.com	Credit and Collections: Attn: SVCE Power Settlements Phone: 408 721-5301 Facsimile: E-mail: SVCEpowersettlements@svcleanenergy.org
Defaults: Attn: OhmConnect Legal Phone: 844.646.2664 Facsimile: N/A E-mail: legal@ohmconnect.com Additional notices of an Event of Default to: OhmConnect Legal - WSGR Email: kberry@wsgr.com	Defaults: Attn: Girish Balachandran, CEO Phone: 408 721-5301 Facsimile: E-mail: girish@svcleanenergy.org Additional notices of an Event of Default to: Address: Attn: Steve Hall Email: steve@hallenergylaw.com Phone: 408 721-5301

	<p>Supply Plan Contact: Mark Thomas (email): mthomas@acespower.com Phone: (317) 344-7136</p>
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**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

WSPP Standard_SVCE_Final_10-28_Ohm-FINAL

Final Audit Report

2020-10-30

Created:	2020-10-29
By:	Kristen Frick (kristen@ohmconnect.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAbQovEiYvUjPIMhbZMrVKabymjL4yb56X

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-  Document created by Kristen Frick (kristen@ohmconnect.com)
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-  Document e-signed by Matt Duesterberg (matt@ohmconnect.com)
Signature Date: 2020-10-30 - 3:23:41 AM GMT - Time Source: server- IP address: 73.231.243.34
-  Agreement completed.
2020-10-30 - 3:23:41 AM GMT



CONFIRMATION BETWEEN

Powerex Corp. * and Silicon Valley Clean Energy Authority

Powerex Deal No. HKE906/HKE909/HKE914

This confirmation letter ("**Confirmation**") confirms the Transaction entered into on the Effective Date between Powerex Corp. ("**Seller**" or "**Powerex**") and Silicon Valley Clean Energy Authority, a California joint powers authority ("**Purchaser**" or "**SVCEA**") regarding the sale and purchase of firm energy from a specified source and provision of scheduling services in accordance with the terms and provisions of the EEI Master Power Purchase and Sale Agreement between the Parties dated November 28, 2016, together with any and all schedules, exhibits and supplements thereto or incorporated therein by reference (the "**Master Agreement**") under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions and confirmations between the Parties and the Master Agreement, form a single integrated agreement and are not separate contracts. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. Purchaser and Seller are each referred to as a "**Party**" and collectively, the "**Parties**".

Product 1 – Carbon Free Firm Energy

Seller: Powerex

Purchaser: SVCEA

Product 1: WSPP Agreement Schedule C Firm Energy supplied from the Carbon Free Source (as defined in Schedule "A") ("**Carbon Free Firm Energy**"). The Product cannot be curtailed by Seller or Purchaser for economic reasons.

Delivery Term: [REDACTED], inclusive.

Contract Quantity and Delivery Profile:

<u>Delivery Period</u>	<u>Delivery Point</u>	<u>Delivery Profile</u>	<u>Hourly Contract Quantity (MW)</u>
[REDACTED]			

<u>Delivery Period</u>	<u>Delivery Point</u>	<u>Delivery Profile</u>	<u>Hourly Contract Quantity (MW)</u>

MCC Bucket: MCC Bucket Category 1

Contract Price (Product 1):



Delivery Point: California Oregon Border (Malin500) ("COB"), north to south, as specified in the table above, which is an Intertie. The Parties may subsequently agree to an alternate delivery point in writing, *provided* a transmission path is specified to such other delivery point *and* such other delivery point is an Intertie.

Passage of Title: As set forth in Section 10.3 of the Master Agreement, title to the Carbon Free Firm Energy shall pass from Seller to Purchaser at the Delivery Point.

Transmission and Agreed Transmission Path:

Under this Confirmation and pursuant to Section 10 of the WSPP Agreement, the agreed transmission path for deliveries to the Delivery Point is the BC/US Border to John Day and John Day to COB (the "**Agreed Transmission Path**").

For the purposes of Section 10 of the WSPP Agreement, "firm transmission" means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a "continuous physical transmission path" which shall provide for "direct delivery of electricity" (as such terms are defined in the Cap and Trade Regulations).

Special Conditions – Product 1

1. **Generally Accepted Utility Practice.** All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.
2. **External Resource/Alternate Source.**
 - (a) Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.
 - (b) The large hydroelectric facilities comprising the Carbon Free Source are owned and operated by British Columbia Hydro and Power Authority ("BC Hydro"). BC Hydro remains responsible at all times for the physical operation of its system and makes all dispatch decisions with respect to generation from any particular generation resource(s). Purchaser acknowledges and agrees that this Confirmation does not constitute a right to call upon or request dispatch of any

particular hydroelectric facility comprising the Carbon Free Source, but rather constitutes a firm obligation of Seller to deliver Carbon Free Energy from one or more of the particular facilities comprising the Carbon Free Source, as dispatched by BC Hydro in its sole discretion, and subject at all times to such limitations and exceptions as expressly set forth herein.

- (c) In the event that unforeseen physical or operational limitations that are outside of the Seller's reasonable control limit the ability of Seller to deliver energy from the Carbon Free Source to the Delivery Point after a Supply Plan has been submitted with respect to Product 1 (including curtailments or de-rate of transmission service from the Carbon Free Source's host Balancing Authority Area or significant or wide-spread loss of generation within the host Balancing Authority Area), and, under the CAISO Tariff, CAISO requires delivery of energy from an alternate source, Purchaser agrees that Seller *may* deliver energy to Purchaser from one or more of an alternative group of resources located outside of the CAISO Balancing Authority Area. The Contract Price will be reduced by the Attributes Fee (as defined below) for any energy delivered from an alternate source pursuant to this paragraph.

- 3. **Product 1 Contract Price Components.** The Parties acknowledge that the Contract Price is a per megawatt hour aggregation of the following components:

- [REDACTED]
- [REDACTED]
- [REDACTED]

The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller). All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

- 4. **Additional Seller Representations.** Seller represents and warrants to Purchaser as follows:

- (a) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;
- (b) as of the Reference Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source's host balancing authority area and is not committed to another balancing authority area;
- (c) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;

- (d) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Purchaser hereunder has been sold once and only once by Seller;
- (e) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission; and
- (f) throughout the Delivery Term, Seller's firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source's host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.

For greater certainty, Seller's performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

Product 2 – Scheduling Coordinator Services

Seller: Powerex

Purchaser: SVCEA

Product 2: Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Purchaser as Product 1.

Overview:

The purpose of Product 2 is for Powerex to perform the required scheduling coordinator functions for the "resource" (as such term is used by the CPUC in D. 20-06-028). CPUC D.20-06-028 permits the Purchaser to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Powerex is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and it has the requisite experience, skill and capability to perform the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Powerex will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities specified below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Purchaser's Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink.

Scheduling Coordinator Services:

Powerex agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy procured by Purchaser as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below ("**Scheduling Coordinator Services**"):

- (a) For each hour in which energy is to be delivered to the Delivery Point, Powerex will Bid or Self-Schedule (as such terms are defined in the CAISO Tariff) the Carbon Free Firm Energy into the CAISO Day Ahead Market and Real-Time Market, *provided* if Powerex submits Bid(s) (other than Self-Schedule) such Bid(s) shall be subject to the following requirement ("**Bidding Requirement**");

- (i) [REDACTED]

- (ii) for each hour that is not an Availability Assessment Hour, Powerex's Bid(s) shall either be
 - A. [REDACTED]
 - B. [REDACTED]
- (b) Working with CAISO and Purchaser to set up a Resource ID associated with Powerex's SCID for purposes of undertaking the services in paragraph **Error! Reference source not found.** above ("RA Resource ID"), which shall be set up as a CAISO system resource;
- (c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;
- (d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:
 - (i) Powerex's Scheduling Coordinator PSE in the "physical path" at and from the Delivery Point to the Sink,
 - (ii) Purchaser's PSE in the "market path" at the Delivery Point,
 - (iii) Purchaser's PSE as the last PSE in the "physical path",
 - (iv) RA Resource ID in the Misc(Token/Value) field in "physical path" at and from the Delivery Point to the Sink, and
 - (v) A CAISO Aggregated Pricing Node as the Sink; and
- (e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Schedule "B" for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Schedule "B" due to changes in CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

Powerex's Scheduling Contacts:

	Phone	Fax
Prescheduler:	(604) 891-5007	(604) 891-5045
Real-Time:	(604) 891-5091	(604) 891-5045
Mid-office:	(604) 891-5057	(604) 891-5045

Purchaser's Identifiers

Purchaser's SCID: LSVCE
 Purchaser's PSE: On or before December 28, 2020, Purchaser shall provide Seller with written notice setting out Purchaser's PSE.

Special Conditions – Product 2

5. **Resource Adequacy Plan.** Purchaser shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan ("**RA Plan**"), as required by the CAISO Tariff, that explicitly identifies the Delivery Profile hours as the temporal constraint/limitation (e.g. 24x7 (Flat), On-Peak, AAH etc.) and such RA Plan shall otherwise match the Supply Plan submitted by Powerex.
6. **CAISO Acceptance/Rejection.** Powerex, in providing the Scheduling Coordinator Services, shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Powerex. If, in any hour of the Delivery Term, CAISO rejects the Bid(s) (including Self-Schedule) submitted by Powerex in the CAISO Day Ahead Market and Real-Time Market, then
 - (a) if Powerex Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that, pursuant to Section 10 of the WSPP Agreement, each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and
 - (b) if Powerex does not Bid in accordance with the Bidding Requirement and Powerex does not deliver the Carbon Free Firm Energy to the Delivery Point for that hour, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller and, unless Seller is otherwise excused from its delivery obligations, , no Capacity Fee shall be due for such hour (as provided in Section 3) and Purchaser shall be entitled to such other remedies as are provided hereunder and in the Master Agreement.
7. **Energy Adjustment.** For each month of the Delivery Term, and in consideration of Powerex retaining any and all revenues received as a result of any CAISO awards from the Bid(s) (including Self-Schedule(s)) submitted by Powerex (among other things), Powerex will credit Purchaser the Energy Adjustment. "Energy Adjustment" means the LMP Index minus \$2.00/MWh for each MWh of the Carbon Free Firm Energy delivered to Purchaser in such month pursuant to this Confirmation.

Special Conditions – Product 1 and Product 2

8. **Definitions.** In this Confirmation:

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

"**AAH**" or "**Availability Assessment Hours**" means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Reference Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending ("**HE**") 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays.

"**Applicable Default Energy Bid**" means the Powerex Default Energy Bid *provided*, for any hours in which the Powerex Default Energy Bid is not (or is no longer) available from CAISO in a timely manner for any reason or CAISO's application of the relevant default energy bid formula is reasonably determined by Powerex to contain material errors or omissions, the Applicable Default Energy Bid for such hours shall be the ICE Day-Ahead

Mid-C Index, provided if the ICE Day-Ahead Mid-C Index is not known or published prior to the deadline for submitting Bids in the CAISO Day Ahead Market, Powerex may submit Bid(s) at a price that is less than or equal to its commercially reasonable best estimate of the expected ICE Day-Ahead Mid-C Index.

"Applicable Meter Data" means, for any hour that energy is delivered to Purchaser hereunder from a facility comprising the Carbon Free Source or an Alternate Source, the hourly meter data (or equivalent) representing generation at and supporting delivery from such facility. For greater certainty, Applicable Meter Data excludes meter data (or equivalent) from any facility for any hour that energy is not delivered from such facility. The foregoing does not preclude Seller from providing additional meter data (or equivalent) to Purchaser if requested by Purchaser, however Seller shall be under no obligation to obtain and provide such data to Purchaser.

"Buyer", as used in the Master Agreement, means Purchaser.

"Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively)

"CAISO Tariff" means the FERC-approved electric tariff of the California Independent System Operator Corporation ("**CAISO**") and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

"Change in Law" means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Reference Date.

"Effective Date" means the date on which both Parties have executed and delivered this Confirmation.

"Federal Holidays" means legal public holidays as set forth in 5 USC § 6103(a).

"Firm Transmission" means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

"Flat" means all Off-Peak and On-Peak hours (24x7).

"Generally Accepted Utility Practice" means a practice established by the Western Electricity Coordinating Council ("**WECC**") or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

"Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission ("**FERC**"), California Public Utilities Commission ("**CPUC**") and Canada Energy Regulator.

"ICE Day-Ahead Mid-C Index" means, for On-Peak Hours, the day-ahead Mid-C Peak Index and, for Off-Peak Hours, the day-ahead Mid-C Off-Peak Index, as published by ICE (Intercontinental Exchange, Inc.).

"LMP Index" means, for any day of delivery, the day-ahead hourly Locational Marginal Price ("**LMP**") at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for NP 15) ("**NP 15 Trading Hub**") for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

"MCC Bucket(s)" means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

"MCC Bucket Category 1" means, as provided in D. 20-06-031, Monday – Friday, four consecutive hours between 4 pm and 9 pm, and at least 40 hours per month from May - September.

"NERC Holiday" means any day designated as a holiday by NERC.

"Off-Peak" means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

"On-Peak" means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

"Powerex Default Energy Bid" means the default energy bid formula accepted and applied by CAISO for local market power mitigation of the Powerex Aggregate Participating Resource (APR) in the Western Energy Imbalance Market, being the aggregate residual capability from hydroelectric facilities that are capable of responding to intra-hour changes in generation, load and interchange which, as of the Reference Date, are the same hydroelectric facilities comprising the Carbon Free Source.

"RA Requirements" means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC's currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 20-06-031 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

"RA Termination Event" means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, *and* (ii) such unexcused failure by Seller is likely to cause Purchaser to not (or no longer) be able to count Product 1 toward its RA Requirements.

"**Reference Date**" means the date on which Seller has executed this Confirmation.

"**Scheduling Coordinator**" has the meaning given in the CAISO Tariff.

"**Sink**" means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

9. **Uncontrollable Force/Force Majeure.** The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPP Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:
- (a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Effective Date, will be considered Uncontrollable Force and Force Majeure,
 - (b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
 - (c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Powerex for any hour(s) of the Delivery Term, subject to Section 3, Powerex and Purchaser shall be relieved of their obligation to sell and deliver or purchase and receive, respectively, the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Powerex shall be relieved of its Scheduling Coordinator Services obligations for such hour(s), and
 - (d) Notwithstanding Section 10 of the WSPP Agreement or Section 3.3 of the Master Agreement, Powerex shall have no obligation to provide notice of Uncontrollable Force or Force Majeure to Purchaser in connection with any limitation, interruption or curtailment of transmission service described above as Purchaser will be included on all E-Tags. However, Powerex will use commercially reasonable efforts to communicate (verbally or electronically in writing) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Powerex is able to deliver to Purchaser during the affected hours.
10. **Verification/Monthly Reporting.**
- (a) The Powerex Default Energy Bid is consistently treated as confidential and commercially sensitive by Powerex, CAISO and CAISO Department of Market Monitoring ("DMM"), and Powerex shall not be required to provide the Powerex Default Energy Bid data to Purchaser (and Purchaser waives its right to obtain such data). In the event Purchaser reasonably disputes Powerex's compliance

with the Bidding Requirement, Purchaser may request, no more frequently than once every three months during the Delivery Term, one of the following:

- (i) that Powerex provide an attestation, in form and substance reasonably acceptable to both Parties, attesting that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement);
 - (ii) that Powerex engage and confidentially provide all relevant data and information to a qualified independent third party selected by Powerex (and reasonably acceptable to Purchaser) to produce a report confirming that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement), and Purchaser shall be entitled to receive a written copy of such independent third party's report provided that no confidential or commercially sensitive information of Powerex, CAISO, CAISO DMM or third parties will be disclosed therein or will be redacted therefrom; or
 - (iii) that Powerex provide such other form of verification as the Parties may agree.
- (b) If Purchaser is legally required or compelled to provide Powerex Default Energy Bid data to a Governmental Authority, Purchaser may request that Powerex provide the Powerex Default Energy Bid data directly to the Governmental Authority and Powerex will use commercially reasonable efforts to cooperate with Purchaser to accommodate Purchaser's request, provided Powerex shall not be required to make such disclosure unless Powerex, in its sole discretion, is satisfied (i) that Powerex is lawfully permitted to provide such data to the Governmental Authority in the circumstances and (ii) the confidentiality protections offered by such Governmental Authority are adequate and appropriate in light of the commercial sensitivity of the particular data requested.
- (c) In no circumstance will Powerex be required hereunder to disclose the energy bid formula underlying the Powerex Default Energy Bid to Purchaser, any other person or entity or any Governmental Authority.
- (d) The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (e.g. transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bidding Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Purchaser having delivery visibility through inclusion on all NERC E-Tags, Powerex will provide a monthly report identifying each hour that the full Hourly Contract Quantity was not delivered, as well as the reason for non-delivery. Powerex will use commercially reasonable efforts to provide the monthly report not later than fifteen (15) days after the end of each month of the Delivery Term.

11. **Electricity Importer.** As a result of the provision of Scheduling Coordinator Services, Powerex will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Powerex will be solely responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation, and will be responsible for any reporting requirements by an electricity importer (as defined in the Cap

and Trade Regulations) for such energy under the Cap and Trade Regulations. For greater certainty, Seller is not assuming or performing on behalf of Purchaser any reporting obligations Purchaser may have under the Cap and Trade Regulations.

12. **Confidentiality.** Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 13(b), provided such Party shall redact commercial terms (e.g. Contract Price) prior to disclosure or disclose the Confirmation confidentially to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. To the extent Applicable Meter Data is provided to Purchaser, the Applicable Meter Data may only be disclosed by Purchaser to an applicable Governmental Authority (or confidentially to a verifier or auditor engaged by Purchaser) if required or requested for the purposes of reporting and compliance with the Power Source Disclosure Regulations (California Code of Regulations, Title 20, Division 2, Chapter 3, Article 5) provided Purchaser shall use commercially reasonable efforts to obtain confidential treatment of such data to be disclosed to the Governmental Authority and otherwise such meter data must be held confidentially by Purchaser. To the extent meter data (or equivalent) other than Applicable Meter Data is provided to Purchaser by Seller, such meter data shall at all times be held confidentially by Purchaser and not disclosed except with the consent of Seller or as permitted under the Master Agreement.

Purchaser shall provide Seller with an annual report identifying those persons or Governmental Authorities to which it disclosed any meter data (or equivalent) provided by Seller hereunder.

13. **RA Requirements / Change in Law.**

- (a) The Parties acknowledge that Purchaser has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Purchaser acknowledges that Seller makes no representation or warranty that Product 1 as procured by Purchaser will be eligible for or can be used or counted toward Purchaser's resource adequacy obligations pursuant to the RA Requirements.
- (b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Purchaser's compliance filings to obtain the CPUC's guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Purchaser's name.
- (c) It is Purchaser's sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and (ii) categorize this Transaction into a MCC Bucket category. Seller shall have no liability to Purchaser in the event Purchaser incorrectly or improperly categorizes this Transaction into an MCC Bucket category in Purchaser's CPUC filings or submissions.
- (d) If there is a Change in Law that (i) materially adversely changes or affects a Party's obligations hereunder or (ii) results in Purchaser being unable to use Product 1 to meet its RA Requirements, the Parties shall attempt in good faith to revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Purchaser to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days following written notice from one Party to the other of the Change in Law ("**Negotiation**

Period"), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 16, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties *provided* that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

14. **Seller Indemnification / Termination.** To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Purchaser or other third party contracting directly or indirectly with Purchaser, then
- (a) Seller agrees to indemnify Purchaser for any monetary penalties directly resulting from Seller's nonperformance hereunder as assessed against Purchaser by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Purchaser following notice from Seller of its nonperformance; and
 - (b) in addition to Purchaser's other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Purchaser may terminate this Confirmation upon written notice to Seller, *provided* such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 16, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no event shall Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

15. **Purchaser Indemnification.** Purchaser agrees to indemnify Seller for any monetary penalties assessed against Seller by CAISO or the CPUC resulting from Purchaser's breach of Section 5.
16. **Survival Upon Early Termination.** To the extent this Confirmation is terminated by either Party as provided in Section 13(d) or 14(b) and Powerex, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Powerex incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For

greater certainty, neither Party will make any further binding commitments to CAISO (e.g. no filing of monthly RA Plans or Supply Plans) after the effective date of termination.

- 17. **Relationship of the Parties.** The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.
- 18. **Condition Precedent.** This Confirmation (and the Transaction confirmed thereby) shall not be binding upon any Party until and unless both Powerex and SVCEA have executed and delivered this Confirmation to the other Party before 3:00 p.m. Pacific Prevailing Time on October 28, 2020. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the Transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

By: 
 Name: Mark Holman
 Title: Managing Director
 Date: 10/22/2020

Silicon Valley Clean Energy Authority, a California joint powers authority

By: 
 Name: Girish Balachandran
 Title: CEO
 Date: 10/22/2020

* Powerex Corp., doing business in California as Powerex Energy Corp.

Schedule "A"

Carbon Free Source

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the "**Carbon Free Source**").

The NERC Source for the Carbon Free Source is BCH.AGC.HYDRO.

Facility and Unit Name	Location	CARB ID#
Bridge River 1 Hydroelectric Generation Facility (CAN)	British Columbia	501022
Bridge River 2 Hydroelectric Generation Facility (CAN)	British Columbia	501023
Cheakamus Hydroelectric Generation Facility (CAN)	British Columbia	501024
G.M. Shrum Hydroelectric Generation Facility (CAN)	British Columbia	501028
Kootenay Canal Hydroelectric Generation Facility (CAN)	British Columbia	501031
Mica Hydroelectric Generation Facility (CAN)	British Columbia	501035
Peace Canyon Hydroelectric Generation Facility (CAN)	British Columbia	501036
Revelstoke Hydroelectric Generation Facility (CAN)	British Columbia	501038
Seven Mile Hydroelectric Generation Facility (CAN)	British Columbia	501041

Schedule "B"

Sample NERC E-Tag

Market Path			
PSE	Product	Contract	Misc(Token/Value)
M1	BCPS01	G-F	
M2	PWX01		
M3	LSE		
M4	PWXSC		
M5	LSE		

Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc(Token/Value)
P1	BCHA		BCPS01(1)	BCH.AGC.HYDRO			
P2		BPAT	PWX01	BC.US.BORDER	JohnDay	BPAT	
P3		BPAT	PWX01	JohnDay	Malin500	BPAT	
P4		CISO	PWXSC	MALIN500	NP15	CISO	
P5	LCA		LSE	NP15			

Explanatory notes:

- Sample Tag based on delivery at COB (Malin500).
- M2-M3(PSE): Market path shows sale from Powerex (PWX01) to Purchaser (denoted as "LSE") at the Intertie (Malin500)
- M3-M4(PSE): Market path show Powerex (PWXSC) at the intertie (Malin500) assuming scheduling responsibility for the energy to NP15.
- P4(PSE): Powerex with scheduling responsibility is electricity importer per Cap and Trade Regulations; the Resource ID will be inserted in Misc(Token/Value) field.
- M5/P5 (PSE): Market path and physical path show a final delivery to the LSE to sink the energy at their load.



CONFIRMATION BETWEEN

Powerex Corp. * and Silicon Valley Clean Energy Authority

Powerex Deal No. HKH065/HKH070/HKH073

This confirmation letter ("**Confirmation**") confirms the Transaction entered into on the Effective Date between Powerex Corp. ("**Seller**" or "**Powerex**") and Silicon Valley Clean Energy Authority, a California joint powers authority ("**Purchaser**" or "**SVCEA**") regarding the sale and purchase of firm energy from a specified source and provision of scheduling services in accordance with the terms and provisions of the EEI Master Power Purchase and Sale Agreement between the Parties dated November 28, 2016, together with any and all schedules, exhibits and supplements thereto or incorporated therein by reference (the "**Master Agreement**") under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions and confirmations between the Parties and the Master Agreement, form a single integrated agreement and are not separate contracts. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. Purchaser and Seller are each referred to as a "**Party**" and collectively, the "**Parties**".

Product 1 – Carbon Free Firm Energy

Seller: Powerex

Purchaser: SVCEA

Product 1: WSPP Agreement Schedule C Firm Energy supplied from the Carbon Free Source (as defined in Schedule "A") ("**Carbon Free Firm Energy**"). The Product cannot be curtailed by Seller or Purchaser for economic reasons.

Delivery Term: [REDACTED] inclusive.

Contract Quantity and Delivery Profile:

<u>Delivery Period</u>	<u>Delivery Point</u>	<u>Delivery Profile</u>	<u>Hourly Contract Quantity (MW)</u>
[REDACTED]			

MCC Bucket: MCC Bucket Category 2

Contract Price (Product 1):

Delivery Point: California Oregon Border (Malin500) ("COB"), north to south, as specified in the table above, which is an Intertie. The Parties may subsequently agree to an alternate delivery point in writing, *provided* a transmission path is specified to such other delivery point *and* such other delivery point is an Intertie.

Passage of Title: As set forth in Section 10.3 of the Master Agreement, title to the Carbon Free Firm Energy shall pass from Seller to Purchaser at the Delivery Point.

Transmission and Agreed Transmission Path:

Under this Confirmation and pursuant to Section 10 of the WSPP Agreement, the agreed transmission path for deliveries to the Delivery Point is the BC/US Border to John Day and John Day to COB (the "**Agreed Transmission Path**").

For the purposes of Section 10 of the WSPP Agreement, "firm transmission" means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a "continuous physical transmission path" which shall provide for "direct delivery of electricity" (as such terms are defined in the Cap and Trade Regulations).

Special Conditions – Product 1

1. **Generally Accepted Utility Practice.** All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.
2. **External Resource/Alternate Source.**
 - (a) Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.
 - (b) The large hydroelectric facilities comprising the Carbon Free Source are owned and operated by British Columbia Hydro and Power Authority ("BC Hydro"). BC Hydro remains responsible at all times for the physical operation of its system and makes all dispatch decisions with respect to generation from any particular generation resource(s). Purchaser acknowledges and agrees that this Confirmation does not constitute a right to call upon or request dispatch of any particular hydroelectric facility comprising the Carbon Free Source, but rather constitutes a firm obligation of Seller to deliver Carbon Free Energy from one or more of the particular facilities comprising the Carbon Free Source, as dispatched by BC Hydro in its sole discretion, and subject at all times to such limitations and exceptions as expressly set forth herein.
 - (c) In the event that unforeseen physical or operational limitations that are outside of the Seller's reasonable control limit the ability of Seller to deliver energy from the Carbon Free Source to the Delivery Point after a Supply Plan has been submitted with respect to Product 1 (including curtailments or de-rate of transmission service from the Carbon Free Source's host Balancing Authority Area or significant or

wide-spread loss of generation within the host Balancing Authority Area), and, under the CAISO Tariff, CAISO requires delivery of energy from an alternate source, Purchaser agrees that Seller *may* deliver energy to Purchaser from one or more of an alternative group of resources located outside of the CAISO Balancing Authority Area. The Contract Price will be reduced by the Attributes Fee (as defined below) for any energy delivered from an alternate source pursuant to this paragraph.

3. **Product 1 Contract Price Components.** The Parties acknowledge that the Contract Price is a per megawatt hour aggregation of the following components:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller). All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

4. **Additional Seller Representations.** Seller represents and warrants to Purchaser as follows:

- (a) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;
- (b) as of the Reference Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source's host balancing authority area and is not committed to another balancing authority area;
- (c) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;
- (d) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Purchaser hereunder has been sold once and only once by Seller;
- (e) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission; and
- (f) throughout the Delivery Term, Seller's firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source's host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.

For greater certainty, Seller's performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

Product 2 – Scheduling Coordinator Services

Seller: Powerex

Purchaser: SVCEA

Product 2: Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Purchaser as Product 1.

Overview:

The purpose of Product 2 is for Powerex to perform the required scheduling coordinator functions for the "resource" (as such term is used by the CPUC in D. 20-06-028). CPUC D.20-06-028 permits the Purchaser to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Powerex is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and it has the requisite experience, skill and capability to perform the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Powerex will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities specified below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Purchaser's Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink.

Scheduling Coordinator Services:

Powerex agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy procured by Purchaser as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below ("**Scheduling Coordinator Services**"):

- (a) For each hour in which energy is to be delivered to the Delivery Point, Powerex will Bid or Self-Schedule (as such terms are defined in the CAISO Tariff) the Carbon Free Firm Energy into the CAISO Day Ahead Market and Real-Time Market, *provided* if Powerex submits Bid(s) (other than Self-Schedule) such Bid(s) shall be subject to the following requirement ("**Bidding Requirement**");
 - (i) [REDACTED]
 - (ii) for each hour that is not an Availability Assessment Hour, Powerex's Bid(s) shall either be
 - A. [REDACTED]
 - B. [REDACTED]
- (b) Working with CAISO and Purchaser to set up a Resource ID associated with Powerex's SCID for purposes of undertaking the services in paragraph **Error! Reference source not found.** above ("**RA Resource ID**"), which shall be set up as a CAISO system resource;

- (c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;
- (d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:
 - (i) Powerex's Scheduling Coordinator PSE in the "physical path" at and from the Delivery Point to the Sink,
 - (ii) Purchaser's PSE in the "market path" at the Delivery Point,
 - (iii) Purchaser's PSE as the last PSE in the "physical path",
 - (iv) RA Resource ID in the Misc(Token/Value) field in "physical path" at and from the Delivery Point to the Sink, and
 - (v) A CAISO Aggregated Pricing Node as the Sink; and
- (e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Schedule "B" for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Schedule "B" due to changes in CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

Powerex's Scheduling Contacts:

	Phone	Fax
Prescheduler:	(604) 891-5007	(604) 891-5045
Real-Time:	(604) 891-5091	(604) 891-5045
Mid-office:	(604) 891-5057	(604) 891-5045

Purchaser's Identifiers

Purchaser's SCID: LSVCE

Purchaser's PSE: On or before December 28, 2020, Purchaser shall provide Seller with written notice setting out Purchaser's PSE.

Special Conditions – Product 2

5. **Resource Adequacy Plan.** Purchaser shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan ("**RA Plan**"), as required by the CAISO Tariff, that explicitly identifies the Delivery Profile hours as the temporal constraint/limitation (e.g. 24x7 (Flat), On-Peak, AAH, etc.) and such RA Plan shall otherwise match the Supply Plan submitted by Powerex.
6. **CAISO Acceptance/Rejection.** Powerex, in providing the Scheduling Coordinator Services, shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Powerex. If, in any hour of the Delivery Term,

CAISO rejects the Bid(s) (including Self-Schedule) submitted by Powerex in the CAISO Day Ahead Market and Real-Time Market, then

- (a) if Powerex Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that, pursuant to Section 10 of the WSPP Agreement, each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and
- (b) if Powerex does not Bid in accordance with the Bidding Requirement and Powerex does not deliver the Carbon Free Firm Energy to the Delivery Point for that hour, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller and, unless Seller is otherwise excused from its delivery obligations, no Capacity Fee shall be due for such hour (as provided in Section 3) and Purchaser shall be entitled to such other remedies as are provided hereunder and in the Master Agreement.

7. **Energy Adjustment.** [REDACTED]

Special Conditions – Product 1 and Product 2

8. **Definitions.** In this Confirmation:

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

"8 Hour Select" means eight consecutive hours each day Monday through Friday, inclusive. The determination of the eight consecutive hours for any day of delivery shall be made by Seller, in its sole and absolute discretion, on a day-ahead and real time basis provided such period includes, at a minimum, hour ending ("HE") 1700 through HE 2100, inclusive.

"AAH" or "Availability Assessment Hours" means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Reference Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending ("HE") 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays.

"Applicable Default Energy Bid" means the Powerex Default Energy Bid provided, for any hours in which the Powerex Default Energy Bid is not (or is no longer) available from CAISO in a timely manner for any reason or CAISO's application of the relevant default energy bid formula is reasonably determined by Powerex to contain material errors or omissions, the Applicable Default Energy Bid for such hours shall be the ICE Day-Ahead Mid-C Index, provided if the ICE Day-Ahead Mid-C Index is not known or published prior to the deadline for submitting Bids in the CAISO Day Ahead Market, Powerex may submit Bid(s) at a price that is less than or equal to its commercially reasonable best estimate of the expected ICE Day-Ahead Mid-C Index.

"Applicable Meter Data" means, for any hour that energy is delivered to Purchaser hereunder from a facility comprising the Carbon Free Source or an Alternate Source, the hourly meter data (or equivalent) representing generation at and supporting delivery from such facility. For greater certainty, Applicable Meter Data excludes meter data (or equivalent) from any facility for any hour that energy is not delivered from such facility. The foregoing does not preclude Seller from providing additional meter data (or equivalent) to Purchaser if requested by Purchaser, however Seller shall be under no obligation to obtain and provide such data to Purchaser.

"Buyer", as used in the Master Agreement, means Purchaser.

"Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively)

"CAISO Tariff" means the FERC-approved electric tariff of the California Independent System Operator Corporation ("**CAISO**") and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

"Change in Law" means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Reference Date.

"Effective Date" means the date on which both Parties have executed and delivered this Confirmation.

"Federal Holidays" means legal public holidays as set forth in 5 USC § 6103(a).

"Firm Transmission" means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

"Flat" means all Off-Peak and On-Peak hours (24x7).

"Generally Accepted Utility Practice" means a practice established by the Western Electricity Coordinating Council ("**WECC**") or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

"Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission ("**FERC**"), California Public Utilities Commission ("**CPUC**") and Canada Energy Regulator.

"ICE Day-Ahead Mid-C Index" means, for On-Peak Hours, the day-ahead Mid-C Peak Index and, for Off-Peak Hours, the day-ahead Mid-C Off-Peak Index, as published by ICE (Intercontinental Exchange, Inc.).

"LMP Index" means, for any day of delivery, the day-ahead hourly Locational Marginal Price ("**LMP**") at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for

NP 15) ("**NP 15 Trading Hub**") for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

"**MCC Bucket(s)**" means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

"**MCC Bucket Category 2**" means, as provided in D. 20-06-031, every Monday – Friday, eight consecutive hours that includes 4 pm - 9 pm.

"**NERC Holiday**" means any day designated as a holiday by NERC.

"**Off-Peak**" means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

"**On-Peak**" means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

"**Powerex Default Energy Bid**" means the default energy bid formula accepted and applied by CAISO for local market power mitigation of the Powerex Aggregate Participating Resource (APR) in the Western Energy Imbalance Market, being the aggregate residual capability from hydroelectric facilities that are capable of responding to intra-hour changes in generation, load and interchange which, as of the Reference Date, are the same hydroelectric facilities comprising the Carbon Free Source.

"**RA Requirements**" means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC's currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 20-06-031 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

"**RA Termination Event**" means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, and (ii) such unexcused failure by Seller is likely to cause Purchaser to not (or no longer) be able to count Product 1 toward its RA Requirements.

"**Reference Date**" means the date on which Seller has executed this Confirmation.

"**Scheduling Coordinator**" has the meaning given in the CAISO Tariff.

"**Sink**" means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

9. **Uncontrollable Force/Force Majeure.** The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPF Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:

- (a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Effective Date, will be considered Uncontrollable Force and Force Majeure,
- (b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
- (c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Powerex for any hour(s) of the Delivery Term, subject to Section 3, Powerex and Purchaser shall be relieved of their obligation to sell and deliver or purchase and receive, respectively, the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Powerex shall be relieved of its Scheduling Coordinator Services obligations for such hour(s), and
- (d) Notwithstanding Section 10 of the WSPF Agreement or Section 3.3 of the Master Agreement, Powerex shall have no obligation to provide notice of Uncontrollable Force or Force Majeure to Purchaser in connection with any limitation, interruption or curtailment of transmission service described above as Purchaser will be included on all E-Tags. However, Powerex will use commercially reasonable efforts to communicate (verbally or electronically in writing) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Powerex is able to deliver to Purchaser during the affected hours.

10. **Verification/Monthly Reporting.**

- (a) The Powerex Default Energy Bid is consistently treated as confidential and commercially sensitive by Powerex, CAISO and CAISO Department of Market Monitoring ("DMM"), and Powerex shall not be required to provide the Powerex Default Energy Bid data to Purchaser (and Purchaser waives its right to obtain such data). In the event Purchaser reasonably disputes Powerex's compliance with the Bidding Requirement, Purchaser may request, no more frequently than once every three months during the Delivery Term, one of the following:
 - (i) that Powerex provide an attestation, in form and substance reasonably acceptable to both Parties, attesting that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement);

- (ii) that Powerex engage and confidentially provide all relevant data and information to a qualified independent third party selected by Powerex (and reasonably acceptable to Purchaser) to produce a report confirming that Powerex has satisfied the Bidding Requirement (or, if Powerex has not satisfied the Bidding Requirement in any hours(s), specifying the hours in which Powerex did not satisfy the Bidding Requirement), and Purchaser shall be entitled to receive a written copy of such independent third party's report provided that no confidential or commercially sensitive information of Powerex, CAISO, CAISO DMM or third parties will be disclosed therein or will be redacted therefrom; or
 - (iii) that Powerex provide such other form of verification as the Parties may agree.
 - (b) If Purchaser is legally required or compelled to provide Powerex Default Energy Bid data to a Governmental Authority, Purchaser may request that Powerex provide the Powerex Default Energy Bid data directly to the Governmental Authority and Powerex will use commercially reasonable efforts to cooperate with Purchaser to accommodate Purchaser's request, *provided* Powerex shall not be required to make such disclosure unless Powerex, in its sole discretion, is satisfied (i) that Powerex is lawfully permitted to provide such data to the Governmental Authority in the circumstances and (ii) the confidentiality protections offered by such Governmental Authority are adequate and appropriate in light of the commercial sensitivity of the particular data requested.
 - (c) In no circumstance will Powerex be required hereunder to disclose the energy bid formula underlying the Powerex Default Energy Bid to Purchaser, any other person or entity or any Governmental Authority.
 - (d) The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (*e.g.* transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bidding Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Purchaser having delivery visibility through inclusion on all NERC E-Tags, Powerex will provide a monthly report identifying each hour that the full Hourly Contract Quantity was not delivered, as well as the reason for non-delivery. Powerex will use commercially reasonable efforts to provide the monthly report not later than fifteen (15) days after the end of each month of the Delivery Term.
11. **Electricity Importer.** As a result of the provision of Scheduling Coordinator Services, Powerex will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Powerex will be solely responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation, and will be responsible for any reporting requirements by an electricity importer (as defined in the Cap and Trade Regulations) for such energy under the Cap and Trade Regulations. For greater certainty, Seller is not assuming or performing on behalf of Purchaser any reporting obligations Purchaser may have under the Cap and Trade Regulations.
12. **Confidentiality.** Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 13(b), provided such Party shall redact commercial terms (*e.g.* Contract Price) prior to disclosure or disclose the Confirmation confidentially

to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. To the extent Applicable Meter Data is provided to Purchaser, the Applicable Meter Data may only be disclosed by Purchaser to an applicable Governmental Authority (or confidentially to a verifier or auditor engaged by Purchaser) if required or requested for the purposes of reporting and compliance with the Power Source Disclosure Regulations (California Code of Regulations, Title 20, Division 2, Chapter 3, Article 5) provided Purchaser shall use commercially reasonable efforts to obtain confidential treatment of such data to be disclosed to the Governmental Authority and otherwise such meter data must be held confidentially by Purchaser. To the extent meter data (or equivalent) other than Applicable Meter Data is provided to Purchaser by Seller, such meter data shall at all times be held confidentially by Purchaser and not disclosed except with the consent of Seller or as permitted under the Master Agreement.

Purchaser shall provide Seller with an annual report identifying those persons or Governmental Authorities to which it disclosed any meter data (or equivalent) provided by Seller hereunder.

13. **RA Requirements / Change in Law.**

- (a) The Parties acknowledge that Purchaser has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Purchaser acknowledges that Seller makes no representation or warranty that Product 1 as procured by Purchaser will be eligible for or can be used or counted toward Purchaser's resource adequacy obligations pursuant to the RA Requirements.
- (b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Purchaser's compliance filings to obtain the CPUC's guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Purchaser's name.
- (c) It is Purchaser's sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and(ii) categorize this Transaction into a MCC Bucket category. Seller shall have no liability to Purchaser in the event Purchaser incorrectly or improperly categorizes this Transaction into an MCC Bucket category in Purchaser's CPUC filings or submissions.
- (d) If there is a Change in Law that (i) materially adversely changes or affects a Party's obligations hereunder or (ii) results in Purchaser being unable to use Product 1 to meet its RA Requirements, the Parties shall attempt in good faith to revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Purchaser to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days following written notice from one Party to the other of the Change in Law ("**Negotiation Period**"), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 16, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other

transactions between the Parties provided that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

14. **Seller Indemnification / Termination**. To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Purchaser or other third party contracting directly or indirectly with Purchaser, then
- (a) Seller agrees to indemnify Purchaser for any monetary penalties directly resulting from Seller's nonperformance hereunder as assessed against Purchaser by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Purchaser following notice from Seller of its nonperformance; and
 - (b) in addition to Purchaser's other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Purchaser may terminate this Confirmation upon written notice to Seller, provided such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 16, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, provided for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no event shall Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

15. **Purchaser Indemnification**. Purchaser agrees to indemnify Seller for any monetary penalties assessed against Seller by CAISO or the CPUC resulting from Purchaser's breach of Section 5.
16. **Survival Upon Early Termination**. To the extent this Confirmation is terminated by either Party as provided in Section 13(d) or 14(b) and Powerex, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Powerex incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For greater certainty, neither Party will make any further binding commitments to CAISO (*e.g.* no filing of monthly RA Plans or Supply Plans) after the effective date of termination.
17. **Relationship of the Parties**. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.
18. **Condition Precedent**. This Confirmation (and the Transaction confirmed thereby) shall not be binding upon any Party until and unless both Powerex and SVCEA have executed

and delivered this Confirmation to the other Party before 3:00 p.m. Pacific Prevailing Time on October 28, 2020. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the Transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By: 

By: 
5CA64B9AC4C24C3...

Name: Mark Holman
Managing Director

Name: Girish Balachandran

Title: _____

Title: CEO

Date: 10/22/2020

Date: 10/22/2020

* Powerex Corp., doing business in California as Powerex Energy Corp.

Schedule "A"

Carbon Free Source

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the "**Carbon Free Source**").

The NERC Source for the Carbon Free Source is BCH.AGC.HYDRO.

Facility and Unit Name	Location	CARB ID#
Bridge River 1 Hydroelectric Generation Facility (CAN)	British Columbia	501022
Bridge River 2 Hydroelectric Generation Facility (CAN)	British Columbia	501023
Cheakamus Hydroelectric Generation Facility (CAN)	British Columbia	501024
G.M. Shrum Hydroelectric Generation Facility (CAN)	British Columbia	501028
Kootenay Canal Hydroelectric Generation Facility (CAN)	British Columbia	501031
Mica Hydroelectric Generation Facility (CAN)	British Columbia	501035
Peace Canyon Hydroelectric Generation Facility (CAN)	British Columbia	501036
Revelstoke Hydroelectric Generation Facility (CAN)	British Columbia	501038
Seven Mile Hydroelectric Generation Facility (CAN)	British Columbia	501041

Schedule "B"

Sample NERC E-Tag

Market Path			
PSE	Product	Contract	Misc(Token/Value)
M1	BCPS01	G-F	
M2	PWX01		
M3	LSE		
M4	PWXSC		
M5	LSE		

Physical Path							
CA	TP	PSE	POR	POD	Sched Entities	Contract	Misc(Token/Value)
P1	BCHA		BCPS01(1)	BCH.AGC.HYDRO			
P2		BPAT	PWX01	BC.US.BORDER	JohnDay	BPAT	
P3		BPAT	PWX01	JohnDay	Malin500	BPAT	
P4		CISO	PWXSC	MALIN500	NP15	CISO	
P5	LCA		LSE	NP15			

Explanatory notes:

- Sample Tag based on delivery at COB (Malin500).
- M2-M3(PSE): Market path shows sale from Powerex (PWX01) to Purchaser (denoted as "LSE") at the Intertie (Malin500)
- M3-M4(PSE): Market path show Powerex (PWXSC) at the intertie (Malin500) assuming scheduling responsibility for the energy to NP15.
- P4(PSE): Powerex with scheduling responsibility is electricity importer per Cap and Trade Regulations; the Resource ID will be inserted in Misc(Token/Value) field.
- M5/P5 (PSE): Market path and physical path show a final delivery to the LSE to sink the energy at their load.

**CONFIRMATION LETTER
BETWEEN
MORGAN STANLEY CAPITAL GROUP INC.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

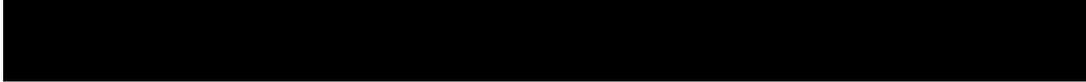
This confirmation letter ("Confirmation") confirms the Transaction between Morgan Stanley Capital Group Inc. ("Morgan Stanley" or "Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCE" or "Buyer"), each individually a "Party" and together the "Parties," dated as of October 19, 2020 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the EEI Master Power Purchase and Sale Agreement dated November 23, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the "Master Agreement"), as amended and supplemented by this Confirmation, under the following terms and conditions. The definitions and provisions contained in this Confirmation, the Master Agreement, the RA Rules (as defined herein), and in the tariffs and/or protocols of the California Independent System Operator ("CAISO") as amended from time to time (the "CAISO Tariff" or the "Tariff"), shall apply to this Confirmation and are incorporated by reference; provided that, to the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts. This Confirmation supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction.

**ARTICLE 1
PRODUCT 1**

1.1. Product 1 – Contract Price, Contract Quantity, Delivery Term and Delivery Point

- (a) Product 1: WSPP Agreement Schedule C Firm Energy supplied from the Carbon Free Source (as defined in Exhibit A) ("Carbon Free Firm Energy"). The Product cannot be curtailed by Seller or Buyer for economic reasons.
- (b) Delivery Term: [REDACTED]
- (c) Hourly Contract Quantity: [REDACTED]
- (d) Delivery Point: Nevada Oregon Border (**NOB**) ("**NOB**"), north to south ("**NOB N-S**"), which is an Intertie. The Parties may subsequently agree to an alternate delivery point in writing, provided a transmission path is specified to such other delivery point and such other delivery point is an Intertie.
- (e) [REDACTED]
- (f) MCC Bucket: **MCC Bucket Category 1**

(g)



(h) Passage of Title: Seller represents and warrants that Seller holds the rights to the Product free and clear of all liens and encumbrances, and Seller agrees to convey and hereby conveys all such Product to Buyer free and clear of all liens and encumbrances as included in the delivery of the Product subject to the terms and conditions contained herein. As set forth in Section 10.3 of the Master Agreement, title and reporting rights to the Carbon Free Firm Energy shall pass from Seller to Buyer at the Delivery Point.

(i) Transmission and Agreed Transmission Path: Under this Confirmation and pursuant to Section 10 of the WSPP Agreement, the agreed transmission path for deliveries to the Delivery Point will be from the Carbon Free Source (as listed in Exhibit A) to Big Eddy and Big Eddy to NOB (each, an “Agreed Transmission Path”).

For the purposes of Section 10 of the WSPP Agreement, “firm transmission” means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a “continuous physical transmission path” which shall provide for “direct delivery of electricity” (as such terms are defined in the Cap and Trade Regulations).

(j) Seller Delivery Obligation. Seller shall deliver Carbon Free Firm Energy in the amount of the Hourly Contract Quantity from Carbon Free Source into the CAISO on behalf of Buyer without substituting electricity from another source, as evidenced by e-Tags, or such other format acceptable to Buyer. Deliveries shall be measured for each hour that the Carbon Free Firm Energy is delivered to the CAISO but shall not exceed the lesser of corresponding amounts shown on the e-Tags or meter data from the Carbon Free Source.

(k) Reporting Requirements. Seller shall provide Buyer with all necessary documentation required to support and verify that delivery requirements have been met according to the Applicable Program, including but not limited to documentation demonstrating that the Carbon Free Source meets the CARB requirements of a Specified Source Facility, the Carbon Free Firm Energy is traceable to a specific generating facility, and that the electricity source claimed has been sold once and only once to a retail consumer.

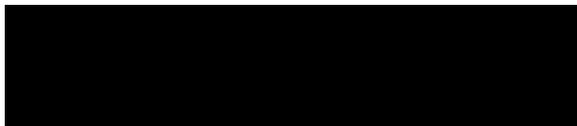
1.2. Special Conditions – Product 1

(a) Generally Accepted Utility Practice: All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.

(b) External Resource: Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.

(c) Product 1 Contract Price Components: The Parties acknowledge that the Contract Price is a per megawatt hour aggregation of the following components:

(i)



(ii)

(iii)

The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller), not to exceed the Minimum Monthly Delivery Quantity during any calendar month. For greater certainty, the Parties hereby acknowledge and agree that Seller may deliver more than the Minimum Monthly Delivery Quantity hereunder (“Additional Monthly Quantity”) during any calendar month; provided however (A) no Capacity Fee shall be due and payable for any such Additional Monthly Quantity and (B) no Attributes Fee shall be payable for Additional Monthly Quantities in excess of the undelivered portion of the 2021 Carbon Free Energy Contract Quantities under the Existing Carbon Free Confirmations. All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

(d) Additional Seller Representations: Seller represents and warrants to Buyer as follows:

- (i) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;
- (ii) as of the Confirmation Effective Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source’s host balancing authority area and is not committed to another balancing authority area (*i.e.* no double-counting);
- (iii) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;
- (iv) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Buyer hereunder has been sold once and only once by Seller;
- (v) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission on the last segment immediately preceding the CAISO balancing authority; and
- (vi) throughout the Delivery Term, Seller’s firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source’s host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.

For greater certainty, Seller’s performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

**ARTICLE 2
PRODUCT 2**

2.1. Product 2 – Scheduling Coordinator Services

- (a) Seller: Morgan Stanley Capital Group Inc.
- (b) Buyer: SVCE
- (c) Product 2: Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Buyer as Product 1.

2.2. Overview

The purpose of Product 2 is for Morgan Stanley to perform the required scheduling coordinator functions for the “resource” (as such term is used by the CPUC in D. 20-06-028, the Carbon Free Firm Energy). Although D.20-06-028 required the Buyer to take responsibility for ensuring that energy associated with an import RA contract is bid into, and delivered to, the CAISO markets, the CPUC’s decision also permitted the Buyer to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Morgan Stanley is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and has the requisite experience, skill and capability to perform the scheduling obligations assumed by it in providing the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Morgan Stanley will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities defined below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Buyer’s Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink as required and contemplated by CPUC D.20-06-028.

2.3. Scheduling Coordinator Services

Morgan Stanley agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy procured by Buyer as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below (“Scheduling Coordinator Services”):

- (a) For each hour in which energy is to be delivered to the Delivery Point, Morgan Stanley will Bid or Self-Schedule (as such terms are defined in the CAISO Tariff) the Carbon Free Firm Energy into the CAISO Day Ahead Market and Real-Time Market, *provided* if Morgan Stanley submits Bid(s) (other than Self-Schedule) such Bid(s) for each hour that is an Availability Assessment Hour, Morgan Stanley’s Bid(s) shall be at a price between negative [REDACTED] (“Bidding Requirement”).
- (b) Working with CAISO and Buyer to set up a Resource ID associated with Morgan Stanley’s SCID for purposes of undertaking the services in paragraph (a) above (“RA Resource ID”), which shall be set up as a CAISO system resource;
- (c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;

- (d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:
 - (i) Morgan Stanley’s Scheduling Coordinator PSE in the “physical path” at and from the Delivery Point to the Sink,
 - (ii) Buyer’s PSE in the “market path” at the Delivery Point,
 - (iii) Buyer’s PSE as the last PSE in the “physical path”,
 - (iv) RA Resource ID in the Misc(Token/Value) field in “physical path” at and from the Delivery Point to the Sink, and
 - (v) A CAISO Aggregated Pricing Node as the Sink; and
- (e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Exhibit B for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Exhibit B due to changes in Carbon Free Source, CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

2.4. Seller’s Scheduling Contacts

	Phone	Fax
Pre-scheduler:	604.658.8116	604.695.8809
Real-Time:	604.658.8120	

2.5. Buyer’s Identifiers

Buyer’s SCID: LSVCE

Buyer’s PSE: TBD

2.6. Special Conditions – Product 2

- (a) Resource Adequacy Plan: Buyer shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan (“RA Plan”), as required by the CAISO Tariff, that explicitly identifies the Delivery Profile hours as the temporal constraint/limitation and such RA Plan shall otherwise match the Supply Plan submitted by Morgan Stanley.
- (b) CAISO Acceptance/Rejection: Morgan Stanley shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Morgan Stanley. If, in any hour of the Delivery Term, CAISO rejects the Bid(s) (including Self-

Schedule) submitted by Morgan Stanley in the CAISO Day Ahead Market and Real-Time Market, then

- (i) if Morgan Stanley Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and
 - (ii) if Morgan Stanley does not Bid in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller, no Capacity Fee shall be due for such hour, and, unless Seller is otherwise excused from its delivery obligations, Buyer shall be entitled to such remedies as are provided hereunder and in the Master Agreement.
- (c) Energy Adjustment: For each month of the Delivery Term, and in consideration of Morgan Stanley retaining any and all revenues received as a result of any CAISO awards from the Bid(s) (including or Self-Schedule(s)) submitted by Morgan Stanley (among other things), Morgan Stanley will credit Buyer the Energy Adjustment. “Energy Adjustment” means the LMP Index minus ██████████ for each MWh of the Carbon Free Firm Energy delivered to Buyer in such month pursuant to this Confirmation.

ARTICLE 3 GENERAL PROVISIONS

3.1 Uncontrollable Force/Force Majeure

The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPP Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:

- (a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Effective Date, will be considered Uncontrollable Force and Force Majeure,
- (b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
- (c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Morgan Stanley for any hour(s) of the Delivery Term, subject to Section 1.2(c), Morgan Stanley and Buyer shall be relieved of their obligation to sell and deliver or purchase and receive, respectively,

the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Morgan Stanley shall be relieved of its SC Services obligations for such hour(s), and

- (d) Morgan Stanley will use commercially reasonable efforts to communicate (verbally or electronically in writing, including via eTags) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Morgan Stanley is able to deliver to Buyer during the affected hours.

3.2 Monthly Reporting

The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (e.g. transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bid Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Buyer having delivery visibility through inclusion on all NERC E-Tags, Morgan Stanley will provide a monthly report that includes a lessor of analysis showing eTags, and meter readings from the Carbon Free Source.

3.3 Electricity Importer

As a result of the provision of Scheduling Services, Morgan Stanley will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Morgan Stanley will be responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation.

3.4 Confidentiality

Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 3.5(b), provided such Party shall redact commercial terms (e.g. Contract Price) prior to disclosure or disclose the Confirmation confidentially to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

3.5 RA Requirements / Change in Law

- (a) The Parties acknowledge that Buyer has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Buyer acknowledges that Seller makes no representation or warranty that Product 1 as procured by Buyer will be eligible for or can be used or counted toward Buyer's resource adequacy obligations pursuant to the RA Requirements.
- (b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Buyer's compliance filings to obtain the CPUC's guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Buyer's name.

- (c) It is Buyer's sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and (ii) determine the appropriate maximum cumulative capacity bucket(s).
- (d) If there is a Change in Law that (i) materially adversely changes or affects a Party's obligations hereunder or (ii) results in Buyer being unable to use Product 1 to meet its RA Requirements, the Parties shall work in good faith to try and revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Buyer to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days' written notice from one Party following the Change in Law ("Negotiation Period"), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 3.8, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties *provided* that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

3.6 Seller Indemnification / Termination

To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Buyer or other third party contracting directly or indirectly with Buyer, then

- (a) Seller agrees to indemnify Buyer for any monetary penalties directly resulting from Seller's nonperformance hereunder as assessed against Buyer by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Buyer following notice from Seller of its nonperformance; and
- (b) in addition to Buyer's other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Buyer may terminate this Confirmation upon written notice to Seller, *provided* such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 3.8, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, *provided* for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no

event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

3.7 Survival

To the extent this Confirmation is terminated by either Party as provided in Section 3.5 or 3.6 and Morgan Stanley, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Morgan Stanley incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For greater certainty, neither Party will make any further binding commitments to CAISO (e.g. no filing of monthly RA Plans or Supply Plans) after the effective date of termination.

3.8 Relationship of the Parties

The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.

[Signatures appear on the following page.]

Acknowledged and agreed to as of the Confirmation Effective Date.

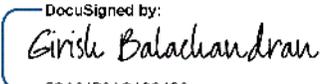
**MORGAN STANLEY CAPITAL GROUP
INC.**

Sign: 

Print: Parker Corbin

Title: Vice President

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

Sign: 

Print: Girish Balachandran

Title: CEO

EXHIBIT A**CARBON FREE SOURCE**

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the “Carbon Free Source”).

NERC Source	Facility and Unit Name	Location	CARB ID#
MSCG_GCPD	Wanapum Dam	Washington State	500054
MSCG_GCPD	Priest Rapids Dam	Washington State	500054
Chelan System	Rocky Reach Dam	Washington State	500055
Chelan System	Rock Island Dam	Washington State	500003
Idaho System	Lucky Peak Dam	Idaho State	500046

EXHIBIT B
SAMPLE NERC E-TAG

Market Path									
PSE	Product	Contract	Misc Info						
MSCG01	G-F		Yes						
LSVCE	L		No						

Physical Path									
BA	TSP	MO	PSE	POR	POD	Sched Entities	Contract	Misc Info	Loss
GCPD			MSCG01	Source:	MSCG_GCPD			No	
	BPAT		MSCG01	BPAT.GCPD	BigEddy	BPAT		No	
	BPAT		MSCG01	BigEddy	NOB	BPAT		No	
	CISO	CISO	MSCG01	NOB	SYLMAR	LDWP		No	
	CISO	CISO	MSCG01	SYLMAR	SP15	CISO		Yes	
CISO		CISO	LSVCE	Sink:	SP15			No	

Transmission Allocation					
TSP	Owner	Product	OASIS	NITS Resource	Misc Info
BPAT (1)	MSCG01	7-F	10031		No
BPAT (2)	MSCG01	7-F	10031		No
CISO (1)	MSCG01	7-F	MSCG_NOB_I_F_IMS010		No
CISO (2)	MSCG01	7-F	MSCG_NOB_I_F_IMS010		No

EXHIBIT C

DEFINITIONS

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

“AAH” or “Availability Assessment Hours” means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Confirmation Effective Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending (“HE”) 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays.

“Applicable Program” means the Cap and Trade Regulations or the PSD Regulations.

“Buyer”, as used in the Master Agreement, means Buyer.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively).

“CARB” means the California Air Resources Bureau of the California Environmental Protection Agency.

“CAISO Tariff” means the FERC-approved electric tariff of the California Independent System Operator Corporation (“CAISO”) and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

“Change in Law” means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Confirmation Effective Date.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the RA Requirements.

“Effective Date” means the date on which both Parties have executed and delivered this Confirmation.

“Existing Carbon Free Confirmations” means, collectively, (a) that certain Confirmation between the Parties dated December 15, 2016 for the purchase and sale of Carbon Free Energy, as amended by that certain First Amendment to Confirmation dated as of February 12, 2018 and (b) that certain Confirmation between the Parties dated February 23, 2018 for the purchase and sale of Carbon Free Energy.

“Federal Holidays” means legal public holidays as set forth in 5 USC § 6103(a).

“Firm Transmission” means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

“Flat” means all Off-Peak and On-Peak hours (24x7).

“Generally Accepted Utility Practice” means a practice established by the Western Electricity Coordinating Council (“WECC”) or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

“Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission (“FERC”) and California Public Utilities Commission (“CPUC”).

“LMP Index” means, for any day of delivery, the day-ahead hourly Locational Marginal Price (“LMP”) at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for NP 15) (“NP 15 Trading Hub”) for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

“MCC Bucket(s)” means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

“MCC Bucket Category 1” means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) every Monday through Friday, for 4 consecutive hours between 4 pm through 9 pm, and at least 40 hours per month from May through September.

“NERC Holiday” means any day designated as a holiday by NERC.

“Off-Peak” means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

“On-Peak” means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

“PSD Regulations” means the Power Source Disclosure Program regulations (California Code of Regulations Title 20, Division 2, Chapter 3, Article 5, Sections 1390 through 1394).

“RA Requirements” means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC’s currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 20-06-031 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

“RA Termination Event” means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, *and* (ii) such unexcused failure by Seller is likely to cause Buyer to not (or no longer) be able to count Product 1 toward its RA Requirements.

“Scheduling Coordinator” has the meaning given in the CAISO Tariff.

“Sink” means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

“Specified Source Facility” means a power source registered by an electric power entity with CARB that is intended to be claimed in an Emissions Data Report pursuant to section 95111(g)(1) of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions in the state of California.

**AMENDMENT
TO
CONFIRMATIONS**

This AMENDMENT TO CONFIRMATIONS (this “Amendment”), dated as of October 19, 2020 (the “Effective Date”), is entered into by and between Morgan Stanley Capital Group Inc. (“Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”), each referred to herein individually as a “Party” and collectively as the “Parties.” This Amendment is being provided pursuant to and in accordance with the terms and provisions of the Master Power Purchase and Sale Agreement between the Parties dated November 23, 2016 (the “Master Agreement”) and constitutes part of and is subject to the terms and provisions of such Master Agreement. This Amendment, the Confirmations (as defined below), and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

RECITALS

WHEREAS, the Parties entered into that certain Confirmation dated December 15, 2016 for the purchase and sale of Carbon Free Energy, as amended by that certain First Amendment to Confirmation dated as of February 12, 2018 (“Confirmation No.1”);

WHEREAS, the Parties entered into that certain Confirmation dated February 23, 2018 for the purchase and sale of Carbon Free Energy (“Confirmation No.2”);

WHEREAS, Confirmation No.1 and Confirmation No. 2 shall collectively be referred to herein as the “Confirmations”;

WHEREAS, the Parties entered into that certain Confirmation dated on or about October __, 2020 for the purchase and sale of Carbon Free Firm Energy during June 1, 2021 through September 30, 2021 (the “CF Firm Energy Transaction”);

WHEREAS, the Parties desire to amend the Confirmations as provided below; and

WHEREAS, in accordance with the Confirmations, any amendment, modification or supplement to the Confirmations shall be entered into only upon a writing signed by both Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. **Amendments to the Confirmations.**

- (a) The Parties hereby agree that the Carbon Free Energy Contract Quantity in Confirmation No. 1 for calendar year 2021 of 350,000 MWh shall be reduced on a one-for-one basis equal to the amount of Carbon Free Firm Energy delivered under the CF Firm Energy Transaction.
- (b) In the event that the amount of Carbon Free Firm Energy delivered under the CF Firm Energy Transaction is greater than 350,000 MWh, the Carbon Free Energy Contract Quantity in Confirmation No. 2 for calendar year 2021 shall be reduced on a one-for-one basis equal to the amount of Carbon Free Firm Energy delivered under the CF Firm Energy Transaction, not to exceed 200,000 MWh.

Section 2. Miscellaneous.

(a) Capitalized Terms. All capitalized terms used in this Amendment which are not defined herein shall have the meaning ascribed to such terms in the Agreement.

(b) Effect of Amendment. All other provisions of the Confirmations remain in full force and effect, and all rights, duties and obligations remain unchanged except as expressly provided in this Amendment. If there is a conflict between the terms and conditions set forth in this Amendment and the terms and conditions set forth in the Confirmations, the terms set forth in this Amendment shall control.

(c) Entire Agreement. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.

(d) Representation. Each Party hereby represents and warrants to the other Party hereto that the execution, delivery and performance hereof by it are within its powers, and have been duly authorized by all necessary action and that this Amendment constitutes its legal, valid and binding obligation.

(e) Governing Law. This Amendment will be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

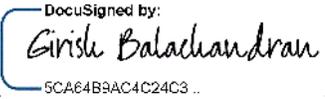
(f) Counterparts. This Amendment may be executed and delivered in counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

**MORGAN STANLEY CAPITAL GROUP
INC.**

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

Sign: 

Sign: 

Print: Parker Corbin

Print: Girish Balachandran

Title: Vice President

Title: CEO



Department of Energy
Bonneville Power Administration
Power Services
CONFIRMATION AGREEMENT

From: Bonneville Power Administration PO Box 3621 Portland, OR 97208-3621 BPA Preschedule: 503-230-3813 BPA Real Time: 503-230-3341	To: Silicon Valley Clean Energy Fax: 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087 BPA Contract: 21PM-16402 Trade Date: 08/05/2020
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This confirmation agreement (“Confirmation Agreement”) sets forth the terms of this transaction agreed to by the Bonneville Power Administration (“BPA”) and Silicon Valley Clean Energy, a California joint powers authority (“SVCE”) (each a “Party” and together the “Parties”). For the purposes of this Confirmation Agreement, the Enabling Agreement shall be deemed to include the Exhibit C-SS Specified Source Confirmation Attachment published by the WSPP. Transactions hereunder are in accordance with the Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services 19PM-16003 (“Enabling Agreement”). The definitions and provisions contained in the Enabling Agreement, in the RA Rules (as defined below), and in the tariffs and protocols of the California Independent System Operator (“CAISO”), as amended from time to time (the “Tariff”), shall apply to this Confirmation Agreement and are incorporated by reference; provided that, to the extent that any provision in this Confirmation Agreement is inconsistent with any provision of the Enabling Agreement, then the provision in this Confirmation Agreement shall govern the rights and obligations of the Parties hereunder.

Buyer: SVCE Trader: Monica Padilla Phone: 408.721.5301 ext 1009 Broker: None Product: Surplus Firm (WSPP Schedule C) Product Description: Energy with an ACS Emissions Factor, MCC Bucket Category 2	Seller: BPA Trader: Mark Miller Phone: 503-230-4003 Holiday: NERC Point of Delivery: MALIN500 (Malin 5 N101)(COB N-S) Resource ID: BPA1 MALIN500_I_F_BPARA Deal Key: 201975
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Start Date	End Date	Hourly Contract Quantity (MW)	Energy Price \$/MWh	Delivery Hours	Total Amount (MWh)	Revenue/ Cost
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All hours will be shown in Pacific Prevailing Time(PPT) defined as HE 0100- HE 2400

I. Product Provisions

1. Definitions:

- a. “Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively).
- b. “CPUC” means the California Public Utilities Commission.

- c. "Delivery Point" means the Point of Delivery.
- d. "Delivery Term" means the period of time beginning on the Start Date and ending on the End Date.
- e. "Flat" is defined as HE 0100 through HE 2400.
- f. "MCC Bucket(s)" means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.
- g. "MCC Bucket Category 2" means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) every Monday through Friday, for 8 consecutive hours that include 4 pm through 9 pm.
- h. "Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for SVCE by the CPUC pursuant to the RA Rules, or by any other governmental body having jurisdiction.
- i. "RA Rules" means orders of the CPUC as contained in Decision ("D.") 04-01-050, D.04-10-035, D.05-10-042, D.06-04-40, D.06-06-064, D.06-07-031, D.06-12-037, D.07-06-029, D.08-06-031, D.09-06-028, D.10-06-036, D.10-12-038, D.11-06-022, D.11-10-003, D.12-06-025, D.13-06-024, D.14-06-050, D.15-06-063, D.16-06-045, and any other existing, subsequent, or modifying decisions, resolutions, orders or rulings issued by the CPUC from time to time in the Resource Adequacy phases of Rulemaking R.04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.11-10-023, R.14-02-001, R.14-10-001, R.17-09-020, and D.20-06-028 or by any applicable successor proceeding.
- j. "System Resource" means a group of resources located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the Delivery Point. System Resource does not include any energy source with an e-tag from a busbar of a nuclear or coal-fired generating facility. However, the Parties understand that the ACS Emissions Factor (set forth below in Exhibit C-SS Specified Source Confirmation Attachment) takes into account some portion of nuclear and/or unspecified generation within BPA's System Resource.

2. Product Requirements:

- a. The Product cannot be curtailed by Seller or Buyer for economic reasons.
- b. Seller shall deliver the Product in the amount of the Hourly Contract Quantity into the CAISO on behalf of Buyer without substituting electricity from another source, as evidenced by e-Tags, or such other format acceptable to Buyer. Deliveries shall be measured for each hour that the Product is delivered to the CAISO but shall not exceed the lesser of corresponding amounts shown on the e-Tags or meter data from the System Resource.
- c. Seller shall self-schedule (or in the alternative, bid in at a level between negative [REDACTED]) into the CAISO day ahead and real-time markets for delivery.
- d. Energy delivered pursuant to this Confirmation Agreement will not be sourced from resources internal to the CAISO Balancing Authority Area.
- e. The capacity supporting energy to be delivered pursuant to this Confirmation Agreement is surplus to the expected capacity requirements of the System Resource's host balancing authority area and is not committed to another balancing authority area (i.e. no double-counting).
- f. Throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Product from the System Resource to a third party or other balancing authority area.
- g. Throughout the Delivery Term, Product will be delivered to the Delivery Point using Firm Transmission.
- h. Throughout the Delivery Term, Seller's firm energy obligation is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the System Resource's host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its

- i. It is Buyer's sole responsibility to ensure it has obtained sufficient intertie import capability at the Delivery Point.
- j. Unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, BPA shall provide the full Contract Quantity to SVCE in compliance with the applicable provisions of the Tariff implementing the RA Rules, including, without reservation, the CPUC Final Decision 20-06-028, and section 40.6 of the CAISO's Tariff. SVCE shall have no liability for the failure of BPA to comply with such Tariff provisions, including any penalties or fines imposed on BPA by the CAISO for such noncompliance.
- k. BPA may schedule quantities greater than the Hourly Contract Quantity as long as the Total Amount is not exceeded over the Delivery Period.

3. Representations:

3.1 BPA and SVCE represent and expressly agree that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure SVCE's (or a subsequent purchaser's) right to the use of the Contract Quantity for the sole benefit of SVCE's RAR, consistent with the CAISO Tariff and RA Rules, including:

- a. Meeting requirements established by the CAISO Tariff and RA Rules, including (1) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term required for full RAR eligibility, (2) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to "deliverability" standards established by the CPUC or other regional entity or entities responsible for RA administration, and (3) provision of a Supply Plan to the CAISO by BPA's Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by SVCE's Scheduling Coordinator (as such terms are defined in the CAISO Tariff);
- b. Negotiating in good faith to make necessary amendments, if any, to this Confirmation Agreement mutually agreed upon to conform this Confirmation Agreement to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO or other regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain for each of the Parties; and
- c. At all times using "Good Utility Practice" as defined in the CAISO Tariff.

3.2 BPA represents that throughout the Delivery Term:

- a. Seller represents and warrants that Seller holds the rights to the Product free and clear of all liens and encumbrances, and Seller agrees to convey and hereby conveys all such Product to Buyer free and clear of all liens and encumbrances as included in the delivery of the Product subject to the terms and conditions contained herein;
- b. SVCE or subsequent purchaser has the exclusive right to count the Contract Quantity of Product from BPA's System Resource toward SVCE's RAR;
- c. The Hourly Contract Quantity of Product sold to Buyer hereunder has been sold once and only once by Seller and no portion of the Contract Quantity of Product has been sold by BPA to any third party in order to satisfy RAR;
- d. Title and reporting rights to the Product shall pass from Seller to Buyer at the Delivery Point; and
- e. BPA shall meet all terms applicable to it under CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and RA Rules approved by the CPUC as applying to the Product.

4. Indemnity Against Penalties and Replacement:

If BPA fails to fulfill its obligation under this Confirmation Agreement to provide the Product, and such failure is not excused under this Confirmation Agreement or the Enabling Agreement or by SVCE's failure to perform, then, in addition to any damages BPA would owe to SVCE pursuant to Section 21.3 of the WSPP Agreement, BPA agrees to indemnify SVCE for any monetary penalties assessed by the CPUC and/or the CAISO against SVCE for SVCE's failure to meet the requirements of the RA Rules or Tariff as a direct result of BPA not fulfilling its obligation under this Confirmation Agreement. Such failure may be excused to the extent BPA provides SVCE with sufficient notice to take action necessary to avoid such monetary penalties being assessed.

Notwithstanding the foregoing, if approved by the CPUC and/or the CAISO, BPA may replace any Product necessary for SVCE to make its equivalent RA demonstration with another System Resource.

5. Resale of Product:

- a. SVCE may re-sell all or a portion of the Contract Quantity and any associated rights, in each case, acquired under this transaction. In the event SVCE re-sells all or a portion of the Contract Quantity of Product and any associated rights acquired under this transaction ("Resold Product") BPA agrees to follow SVCE's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product. With respect to any Resold Product, BPA continues to be liable to SVCE for any damages due to the failure of BPA to comply with the terms of this transaction; provided, and BPA shall have no contractual obligation or liability to any subsequent purchaser.
- b. BPA's obligations under this Section 5 are contingent on SVCE 1) providing BPA with the information required by this Section 5 no later than two (2) Business Days prior to the deadline for filing the Supply Plan for the Resold Product; 2) any requested assignment being consistent with federal law applicable to BPA. Further, any resale of Product by SVCE to a subsequent purchaser must be permitted under the Tariff, CAISO business practices and applicable federal law, and BPA shall not be required to take any action hereunder or execute any documents or instruments that would not be permitted under the Tariff, CAISO business practices or applicable federal law.
- c. In the event there is any Resold Product, SVCE agrees to immediately notify BPA of such sale and agrees to provide BPA with all the information specified below promptly following such sale (and any other information reasonably requested by BPA so that BPA may perform its obligations in this Section 5) and promptly notify BPA of any subsequent changes to such information with respect to any particular sale:
 - i. Benefitting load serving entity SC identification number (SCID),
 - ii. Volume (in MW) of Resold Product,
 - iii. Sale delivery period for Resold Product.

II. ACS Provisions

1. BPA is recognized by the California Air Resources Board (CARB) as an Asset Controlling Supplier (ACS), as that term is defined in the California Mandatory Greenhouse Gas Emissions Reporting Requirements, California Code of Regulations title 17, section 95102 ("CARB GHG Regulations").
2. "ACS Emissions Factor" means the energy can be reported using CARB-approved emission factors, subject to the requirements to claim specified source power.
3. BPA shall act as SVCE's CAISO scheduling coordinator (SC) to bid and deliver the Contract Quantity of Product, consistent with Exhibit C-SS of this Confirmation Agreement, to the CAISO and retain all revenues associated with such deliveries (and if prices are negative, liable for all payments to) CAISO. BPA shall receive no additional compensation for acting as scheduling coordinator under this Transaction. As SVCE's SC, BPA's bid will be consistent with the requirements of the RA Rules and any CAISO tariff requirements.
4. BPA will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Product delivered pursuant to this Confirmation. The Parties acknowledge that BPA will be responsible for satisfying any

Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation.

5. BPA shall ensure the e-tag qualifies as energy with an ACS Emissions Factor and lists the following:
 - a. ZES001 in the Carbon Copy Field of the tag.
 - b. "Silicon Valley Clean Energy" in the Comments Field of the tag.
 - c. Advanced notice to SVCE or its agent, of the e-tag is not required. If SVCE re-sells the ACS Energy, BPA will use the information provided from SVCE to populate the fields in (a) and (b) above with information identifying the subsequent purchaser.
6. BPA shall invoice SVCE the Energy Price described on page one of this Confirmation Agreement for each MWh delivered to the CAISO due to this Confirmation Agreement.

III. Additional Provisions

1. **Collateral Requirements.** Notwithstanding any provision in the Enabling Agreement to the contrary, neither Party shall be required to post collateral or other security for this Confirmation, except that in the event SVCE's Moody's Investors Services, Inc. credit rating drops below investment grade, SVCE shall be required to post collateral or other security for this Confirmation, in an amount determined pursuant to Section 27 of the WSPP Agreement, and taking into account any other collateral provided to BPA under this Confirmation: provided, however that in no event shall SVCE be required to provide collateral that in the aggregate exceeds Termination Payment calculated in accordance with Section 22.2 and Section 22.3 of the WSPP Agreement.
2. **Confidentiality:** Each Party recognizes that this Confirmation Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Section 30.1(4) of the WSPP Agreement is amended by (a) inserting "or requested" after the word "required" and (b) "or compliance filings" after both instances of "proceedings". Notwithstanding the Enabling Agreement, the Parties agree that SVCE, and any subsequent purchaser, may disclose this Confirmation Agreement to the CPUC, the CAISO or any other governmental body having jurisdiction in order to support its RAR showings.
3. **Entire Agreement, No Oral Agreements or Modifications:** This Confirmation Agreement sets forth the terms of this transaction and, along with the Enabling Agreement, shall constitute the entire agreement between the Parties for the purchase and sale of the Product. Notwithstanding any other provision of the Enabling Agreement, this transaction may be confirmed only by a Documentary Writing executed by both Parties, and no amendment or modification to this transaction shall be enforceable except under a Documentary Writing executed by both Parties.
4. **Joint Powers Authority:** SVCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. SVCE will be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation Agreement.
5. **Counterparts:** This Confirmation Agreement may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Confirmation Agreement by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
6. **Surplus Power Use Outside Pacific Northwest:** BPA has determined it has surplus power available in the amount marketed for the term of this Confirmation Agreement. All sales of surplus power for use outside the Pacific Northwest under this Confirmation Agreement are subject to the provisions of Public Law 88-552 and Section 9(c) of Public Law 96-501. BPA shall have the right to curtail a portion of, or terminate all of: (a) the capacity associated with a surplus firm peaking capacity sale on 60 months' written notice; or (b) the energy associated with a surplus energy sale on a 60-day written notice specifying the amounts and duration of the curtailment or termination, if such capacity and/or energy is needed to meet the capacity and/or energy requirements in the Pacific Northwest. Such curtailments to SVCE shall be limited to the amounts and duration necessary to cover BPA's projected Pacific Northwest needs. The sale of capacity and/or energy to SVCE under this Confirmation Agreement shall continue in months during which such capacity and/or

7. **BPA Specified Asset Controlling Supplier (ACS) Provisions:** The Parties agree this is a confirmation for the delivery of energy with a BPA Specified ACS Emissions Factor sourced from “BPAPOWER” on a NERC e-tag. The Parties further agree this transaction includes the WSPP Exhibit C-Specified Source (C-SS) provisions set forth or referenced in Exhibit C-SS attached hereto. This Confirmation Agreement and the attached Exhibit C-SS memorialize the terms of the Parties’ agreement. All prior terms are superseded by the terms of this Confirmation Agreement and Enabling Agreement. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Enabling Agreement or the WSPP Agreement, as applicable.

We are pleased to enter into this transaction. Please sign and return an executed copy of this Confirmation via fax to BPA 503-230-7463 or email to PTCCContractAdmin@bpa.gov.

AGREED AND ACCEPTED

Bonneville Power Administration

**MARK
MILLER**

Digitally signed by MARK
MILLER
Date: 2020.10.28
15:25:46 -07'00'

Print Name: Mark E. Miller
Title: Account Executive
Date: 10/28/20

Silicon Valley Clean Energy

DocuSigned by:

Girish Balachandran

Print Name: Girish Balachandran

Title: CEO
Date: 10/28/2020

**EXHIBIT C-SS
SPECIFIED SOURCE
CONFIRMATION ATTACHMENT**

a. Identity of Source:
The following (i) facility, generator, unit or (ii) ACS system (“Source”): BPA ACS System
Source CARB IDs, if applicable and available: ARB ID #4000
California Energy Commission RPS ID, if Source is an ERR: N/A
WREGIS ID#, if applicable: N/A
b. Source EF_{sp}:
The BPA 2021 ACS Emission Factor posted on the California Air Resources Board website. https://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/acs-power.htm
c. Carbon Adjustment (rapid settlement if Seller delivers higher emissions factor energy than agreed): Carbon Adjustment applies unless the following box is checked:
Carbon Adjustment <u>does not</u> apply and instead of Carbon Adjustment, Seller shall compensate Purchaser as follows, in addition to Purchaser’s remedies in Section 21 of the WSPP Agreement, if Seller fails to schedule and deliver energy from the Source unless excused pursuant to the terms of the applicable Schedule or this Confirmation: For each MWh that BPA does not deliver from the BPA ACS System, or if BPA does not deliver [REDACTED], BPA shall pay a fixed damage amount of [REDACTED] not delivered from the BPA ACS System.
d. EF True-Up (full indemnity for difference between agreed and CARB-assigned emissions factors, settled after verification): EF True-Up does not apply unless one or more of the following boxes that are checked cause a change to EF _{sp} or EF _{asn} :
<input type="checkbox"/> Change in generator operations or fuel source. <input type="checkbox"/> Prospective or retroactive change in law (including AB32). <input type="checkbox"/> Other, as follows: <input type="checkbox"/> All other circumstances. <input type="checkbox"/> EF True Up damages are limited as follows: [e.g., caps]
e. RECs Disclosure (not applicable for an ACS system Source): Seller represents and warrants that the Source is not an ERR, unless the box is checked below. This is a disclosure, not an option, and failure to check this box does not excuse performance if the Source is or becomes an ERR.
<input type="checkbox"/> The Source is an ERR, and Section 6.c therefore applies.
f. Regulation Incorporation: This transaction is not Regulation Incorporation unless the following box is checked:
<input type="checkbox"/> This transaction is Regulation Incorporation and Section 6.e applies.
g. Additional provisions:



Calpine Energy Services, L.P.
 717 Texas Avenue, Suite 1000
 Houston, Texas 77002
 (713) 830-8333
 Fax: (713) 830-8868

CONFIRMATION LETTER (ENERGY)

"CONFIDENTIALITY NOTICE: The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents."

Date: October 30, 2020
 To: Silicon Valley Clean Energy Authority
 Attention: Executive Director
 Email:
 From: Calpine Energy Services, L.P.
 Re: Calpine Deal Number:
 Calpine Agreement Number:

The purpose of this Confirmation is to confirm the terms and conditions of the transaction (the "Transaction") agreed upon by Buyer and Seller, each individually a "Party" and together the "Parties," as of the Effective Date specified below. This Confirmation supplements, forms a part of, and is subject to that certain Edison Electric Institute Master Power Purchase and Sale Agreement between Buyer and Seller, as may have been previously amended, including by the Master Power Purchase and Sale Agreement Cover Sheet dated March 9, 2018 (the "Master Agreement"). All provisions contained in or incorporated by reference in the Master Agreement will govern this Confirmation except as expressly modified herein. The Master Agreement shall be governed by the laws of the state governing the Master Agreement as therein set forth regardless of the law governing this Confirmation as set forth below. Subject to any contrary provisions in the Master Agreement, in the event of any inconsistency between the provisions of the Master Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

We confirm the following terms of our Transaction:

Buyer: Silicon Valley Clean Energy Authority
 333 W El Camino Real #330
 Sunnyvale, CA 94087
 Attn: Executive Director
 Email:

Seller: Calpine Energy Services, L.P.
 717 Texas Avenue, Suite 1000,
 Houston, Texas 77002
 Attn: Contract Administration
 Tel: (713) 830-8751

And

Calpine Energy Services, L.P.
3003 Oak Road, Suite 400
Walnut Creek, CA 94597
Attn: Rosemary Antonopoulos
Tel: (925) 557-2283

Effective Date: October 30, 2020

Delivery Term: The "Delivery Term" shall be from [REDACTED], inclusive. Notwithstanding the foregoing, for the sole purpose of matching delivery of RECs with Delivered Energy from the Project, such period will extend through the date that all RECs associated with such energy have been delivered from Seller to Buyer in accordance with this Confirmation.

Product: "Product" means Delivered Energy which meets the criteria for Section 399.16(b)(1)(A) of the California Public Utilities Code, comprised of: (1) Unit Firm energy, (2) Renewable Energy Credits generated by the Project and transferred by Seller through a WREGIS Certificate to Buyer under this Confirmation, and (3) all Green Attributes associated with the renewable energy delivered to Buyer as part of this Confirmation. The Product does not include any other non-renewable and environmental attributes (e.g., ancillary services or resource adequacy capacity).

Project: The term "Project" means one or more of the geothermal power plants owned or controlled by Sellers and located in Lake and Sonoma Counties, California. Exhibit A identifies each of these plants as of the Effective Date. Following the Effective Date, Seller may add or remove generating facilities to Exhibit A with prior written notice to Buyer, provided that each facility added is certified by the CEC as an ERR and meets the RPS compliance requirements for Category 1 as set forth in California Public Utilities Code Section 399.16(b)(1)(A) and CPUC Decision 11-12-052; provided, that Buyer's consent shall be required to remove generating facilities from Exhibit A for reasons other than repair, mothballing, decommissioning, force majeure, or the sale of such facility.

Delivery Point: "Delivery Point" means NP 15 EZ Gen Hub.

Meter Data: To provide evidence of Delivered Energy, in connection with submission of its monthly invoice and upon the request of Buyer, Seller shall provide to Buyer records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation and delivery of the Delivered Energy by the Project (and upon Buyer's reasonable request access to any records, including invoices or settlement data from the CAISO, necessary to verify the invoice).

Payment: For each MWh of Delivered Energy scheduled in accordance with this Confirmation, not to exceed the Contract Quantity, Buyer shall pay Seller the Contract Price.

“Contract Price” is as follows:

Contract Years	Price (\$/MWh)
████	██████████

Contract Quantity:

Contract Years	Contract Quantity
████	████████████████████ ██████████

Renewable Energy

Credit Certificates: To provide evidence of Green Attributes, Seller shall transfer to Buyer the RECs to Buyer’s WREGIS account(s) within fifteen (15) Business Days after WREGIS creates certificates from each month’s meter data (approximately four months after flow under current WREGIS operating conditions). If Buyer’s WREGIS account ID is not available as of the start of the Delivery Term, Buyer will provide it to Seller promptly once Buyer receives the WREGIS account ID. REC deliveries will be made by transfer of WREGIS Certificates to Buyer’s WREGIS account pursuant to WREGIS Operating Rules. Seller shall, at its option, transfer the WREGIS Certificate using forward certificated transfer or any other transfer permitted under the WREGIS Operating Rules. With respect to REC deliveries, Product flow shall be considered the month in which the WREGIS Certificates are created by WREGIS under current operating conditions.

Scheduling and

CAISO Revenues: Seller shall provide (or cause to be provided) all Scheduling Coordinator services for the Project (and all units constituting the Project) and for delivery of Product to the Delivery Point. Buyer shall provide (or cause to be provided) all Scheduling Coordinator services for Product at and from the Delivery Point. The Parties will purchase and sell the Contract Quantity of Product through Inter-SC Trades scheduled on a Day-Ahead basis at the NP15 EZ Gen Hub in compliance with the CAISO Tariff. As between Buyer and Seller, Seller shall be responsible for all CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and payments) associated with the Project and the delivery of Product to the Delivery Point.

ADDITIONAL TERMS:

- a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6]
- b) Seller shall agree to reasonably assist Buyer with Buyer’s California Renewables Portfolio Standard Program compliance filings as requested by Buyer. In connection with the foregoing, neither Seller nor its affiliates shall be required to (i) expend or incur any legal costs (either internal or external) in providing such assistance or (ii) prepare or defend a filing or otherwise advocate on behalf of Buyer.
- c) 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]
- d) Seller shall, at its sole cost and expense, take all actions and execute all documents or instruments necessary to ensure that the RECs sold hereunder can be transferred to Buyer utilizing WREGIS. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules effective as of the date of this Confirmation regarding the certification and transfer of RECs sold hereunder to Buyer. During the Delivery Term, Seller shall have in-place, or shall submit documentation to establish, an account with WREGIS. Seller shall transfer RECs to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller shall be responsible for all customary expenses associated with WREGIS Certificate issuance fees and utilizing WREGIS to transfer the RECs to Buyer, or its designee, except for any costs incurred by Buyer with respect to Buyer’s registration with WREGIS and Buyer’s WREGIS account.
- e) Seller hereby provides and conveys all Green Attributes associated with the electricity generation from the Project delivered to Buyer as part of the Product. Seller represents and warrants that Seller holds the rights to all such Green Attributes, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- f) Because WREGIS Certificates will only be created for whole MWh amounts of output generated, any fractional MWh amounts will be carried forward during the Delivery Term until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- g) Seller shall be responsible, at its sole expense, for validating, adjusting, and disputing

data with WREGIS so that the data from the Project's meter(s) corresponds with the quantity of RECs conveyed hereunder. Upon request Seller shall provide Buyer with copies of all correspondence or documentation to or from WREGIS with respect to any such validation, adjustment, or dispute.

- h) Without limiting Seller's obligations, if a WREGIS Certificate deficit is caused solely by an error or omission of WREGIS or the California Independent System Operator, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. If WREGIS changes the WREGIS Operating Rules after the Confirmation Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Confirmation, the Parties promptly shall modify this Agreement as reasonably required to preserve the intended economic benefits of this transaction for both Parties, and so cause and enable Seller to transfer to Buyer's WREGIS Account the RECs sold to Buyer hereunder.
- i) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC 1]

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC 2]

- j) Notwithstanding anything else in this Confirmation, and subject to Seller's obligations under this Confirmation, Buyer acknowledges and agrees that the sale of energy and RECs by Seller from the Project is nonexclusive.
- k) Buyer Limited Assignment: Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("Limited Assignee") that has creditworthiness that is equal to or better than the creditworthiness of Buyer (which is Baa2 with Moody's as of the Effective Date) of Buyer's right to receive Product and its obligation to make payments to the Seller, which assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under the Transaction, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed assignment agreement in such form as reasonably agreed between the Parties. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer and Seller's ability to make the representations and warranties contained therein.

- l) Confidentiality: Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Buyer may be required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Buyer that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call and letter sent via electronic mail, and/or by overnight carrier. Such notice shall provide a copy of the request and describe the specific information that has been requested. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. If Buyer discloses any such confidential information pursuant to the Act, Buyer will promptly provide notice of such disclosure (and the contents thereof) to Seller, and from and after such disclosure, such disclosed confidential information shall no longer be treated as confidential pursuant to the Master Agreement or this Confirmation. Notwithstanding the foregoing, Buyer may release confidential information without advance notice to or over the objection of Seller if Buyer’s legal counsel delivers a written legal opinion to Buyer that Buyer is required by law to release such confidential information, and Buyer delivers such legal opinion to Seller.
- m) Change in Law: Seller shall make commercially reasonable efforts to comply with changes in law in the California RPS, provided that Seller shall not be required to incur costs greater than an aggregate amount of \$100,000 during the entire Delivery Term (the “Capped Amount”). The Parties acknowledge and agree that any such change in law shall not (i) entitle Buyer to a change in the Contract Price or Payment terms, (ii) result in any change to the Contract Quantity, (iii) give either Party the right to terminate this Agreement, or (iv) allow for the severability of any provisions of this Confirmation pursuant to the Master Agreement. This provision shall not apply to any Product that was Delivered and Accepted prior to any change in law if such Product complies with the California RPS.
- n) No Recourse to Members of Buyer: Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of

Buyer or Buyer's constituent members, in connection with this Agreement.

- o) Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
- p) Entire Agreement; No Oral Agreements or Modifications: This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

ADDITIONAL DEFINITIONS:

"Agreement" or "agreement" means this Confirmation.

"Buyer" as used herein shall have the same meaning as "Purchaser" under the Master Agreement.

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

"CAISO Grid" means the system of transmission lines and associated facilities of the Participating Transmission Owner that have been placed under the CAISO's operational control.

"CAISO Tariff" means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as it may be amended, modified, supplemented or replaced (in whole or in part) from time to time.

"California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill SB1X, and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time and as implemented by the CPUC through decisions addressing RPS requirements, including but not limited to, D. 11-12-020, D. 17-06-026, and D. 19-02-007, as those obligations may be amended or supplemented from time to time by the CPUC.

"CEC" means the California Energy Commission, or any successor entity.

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

"Delivered Energy" means energy generated and metered from the Project with associated Green Attributes that is scheduled in accordance with this Confirmation.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

“Green Tag Purchaser” means Buyer.

“Locational Marginal Price” has the meaning specified in the CAISO Tariff.

“NERC” means the North American Electric Reliability Corporation.

“NP15 EZ Gen Hub” has the meaning specified in the CAISO Tariff.

“Participating Transmission Owner” means Pacific Gas and Electric Company in its capacity as the owner of certain transmission facilities placed under the operational control of the CAISO pursuant to the terms of the CAISO Tariff.

“Renewable Energy Credit” or “REC” has the meaning set forth in the California Public Utilities Code Section 399.12 and CPUC Decision 08-08-028, as may be amended or supplemented from time to time or as further supplemented by applicable law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of energy from the Project which shall be qualified and certified as an ERR.

“Scheduling Coordinator” means an entity certified by CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“WREGIS” means Western Renewable Energy Generating Information System.

“WREGIS Certificate” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated by applicable law as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS, as amended from time to time.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

CALPINE ENERGY SERVICES, L.P.

DS
RA

DocuSigned by:

Alexandre B. Makler

By: _____
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Name: Alexandre B. Makler

Title: Vice President

**SILICON VALLEY CLEAN ENERGY
AUTHORITY**

DocuSigned by:

Girish Balachandran

By: _____
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Name: Girish Balachandran

Title: Chief Executive Officer

EXHIBIT A**PROJECT INFORMATION**

Name of Facility	CEC RPS ID
Aidlin Power Plant	60115A
Sonoma Power Plant	60010A
Geysers Units 5&6	60002A
Geysers Units 7&8	60003A
Geysers Unit 11	60025A
Geysers Unit 12	60004A
Geysers Unit 13	60005A
Geysers Unit 14	60026A
Geysers Unit 16	60006A
Geysers Unit 17	60007A
Geysers Unit 18	60008A
Calistoga Power Plant	60117A
Geysers Unit 20	60009A