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George Tyson, Chair
Town of Los Altos Hills

AGENDA PACKET MATERIALS AMENDMENTS SUMMARY

Tina Walia, Vice Chair
City of Saratoga

4/11/23

1. Draft Resolution added for Item 1e

Elliot Scozzola
City of Campbell

2. Draft agreement with Middle River Power added for Item 4

Sheila Mohan
City of Cupertino

3. Reference to Draft agreement as attachment added to staff report for Item 4

4. Presentation slides amended for Item 4

Zach Hilton
City of Gilroy

Sally Meadows
City of Los Altos

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Bryan Mekechuk
City of Monte Sereno

Yvonne Martinez
Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara



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svcleanenergy.org

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

Wednesday, April 12, 2023
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

Administrative Conference Room, Gilroy City Hall
7351 Rosanna St.
Gilroy, CA 95020

929 Coventry Way
Milpitas, CA 95035

Wasa Park Hotel
1 Sankt Eriksplan, 113 20,
Stockholm, Sweden

Teleconference Meeting Information:

<https://cityofcupertino.zoom.us/j/91440082566>

Telephone (Audio Only):

US: +1 669-900-6833

Webinar ID: 914 4008 2566

Members of the public may also attend this meeting in person, or observe this meeting electronically by accessing the meeting via instructions above. Public Comments can be sent in advance of the meeting via email up to three hours before the meeting begins to Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org and will be distributed to the Board of Directors. The public will also have an opportunity to provide comments during the meeting. Members of the public participating remotely and using Zoom may comment during public comment or the applicable agenda item by using the Raise Hand feature and you will be recognized by the Chair. Those using the telephone (audio only) feature should press star 9 on your phones to initiate the "Raise Hand" function in Zoom. You will then be announced, unmuted, and your time to speak will begin.

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,

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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

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 March 8, 2023, Board of Directors Meeting
- 1b) Receive February 2023 Treasurer Report
- 1c) Review Operating Rules and Regulations Amendment to Expand Executive Committee Membership to Up to Six Board Members
- 1d) Authorize the Chief Executive Officer to Execute an Amended and Restated PPA for a Previously Executed Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc. in an Amount Not to Exceed \$7,400,000 and for a Modified Term from January 1, 2024 through December 31, 2034
- 1e) Adopt Resolution to Approve SVCE's Amended Files and Records Management Policy and Authorize the Chief Executive Officer to Make Future Updates to the Policy and Records Retention Periods in Consultation with General Counsel
- 1f) Receive Q1 2023 Decarbonization Programs Update
- 1g) Authorize the Chief Executive Officer to Execute Amendment to Agreement with Pisenti & Brinker, LLP for Financial Audit Services

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1h) Executive Committee Report

1i) Legislative Response to Industry Transition 2023 Ad Hoc Committee Report

1j) California Community Power Report

1k) Additional Committee Reports

Regular Calendar

2) CEO Report (Discussion)

3) Delegate Authority to the Chief Executive Officer to Execute Power Purchase Agreement for Biomass Project Rio Bravo Fresno (Action)

4) Adopt Resolution Authorizing the Chief Executive Officer to Finalize Negotiations and Execute Power Purchase Agreement with Middle River Power for the Hanford Hybrid Natural Gas Power Plant and Battery Energy Storage System; Allowing for an Exception to the Board-adopted Energy Risk Management Policy; and Directing Staff to Return with a Policy and Guidelines for Establishing a Fund to Mitigate the Impacts of Emissions Associated with the Hanford PPA (Action)

5) Adopt Resolution to Update Design of SVCE's E-ELEC Generation Rate Discount (Action)

Board Member Announcements and Direction on Future Agenda Items

Public Comment on Closed Session

The public may provide comments regarding the Closed Session item(s) just prior to the Board beginning the Closed Session. Closed Sessions are not open to the public.

Closed Session

Conference with Legal Counsel – Anticipated Litigation

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (one potential case)

Report from Closed Session

Adjourn

SVCE GLOSSARY OF TERMS

BTM – Behind the Meter – Customer-sited resources which connect to the distribution system on the customer's side of the utility's meter. See also "DER".

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 unit of power generation 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.

EE – Energy Efficiency

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

FERC – Federal Energy Regulatory Commission – Independent federal agency that regulates the interstate transmission of electricity, natural gas and oil. The CAISO is subject to FERC jurisdiction.

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.

MMT – Million Metric Tonnes – Common unit of measurement in regulatory and policy space for California's GHG emissions.

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

NERC – North American Electric Reliability Corporation – Non-profit regulatory authority whose mission is to assure the reliability and security of the grid.

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.

PRM – Planning Reserve Margin – Additional level of procurement required in the RA program above the expected peak requirement to account for variability in supply (e.g. plant outages) and demand (e.g. extreme weather). Currently set at 15%.

PSPS – Public Safety Power Shutoff – An event in which the IOUs purposely turn off segments of the grid due to high risk of ignition and wildfires.

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 to contribute their share of system reliability. Today LSEs must procure no less than 115% of the peak hour load. In 2023 and 2024, this will increase to 116% and 117% respectively. Beginning in 2025 a new RA program will be implemented requiring LSEs show capacity to meet their hourly reliability needs, the “PRM” adder is still undetermined.

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 energy supply made up of a collection of an aggregation of distributed energy resources (DERs), such as smart EV chargers, smart thermostats, building energy management systems, battery storage systems, solar PV and smart inverters.

WECC – Western Electricity Coordinating Council - WECC promotes bulk power system reliability and security in the Western Interconnection, which covers most of the western United States. WECC is the Regional Entity responsible for compliance, monitoring and enforcement and oversees reliability planning and assessments.



Silicon Valley Clean Energy Authority

Board of Directors Meeting

Wednesday, March 8, 2023

7:00 pm

Cupertino Community Hall

10350 Torre Avenue

Cupertino, CA

Administrative Conference Room, Gilroy City Hall

7351 Rosanna St.

Gilroy, CA 95020

Morgan Hill City Hall

17575 Peak Ave.

Morgan Hill, CA 95037

DRAFT MEETING MINUTES

Call to Order:

Chair Tyson called the Regular Meeting to order at 7:01 p.m.

Roll Call

Present:

George Tyson (Chair), Los Altos Hills

Tina Walia (Vice Chair), Saratoga

Elliot Scozzola, Campbell

Sheila Mohan, Cupertino

Zachary Hilton, Gilroy (Participated via teleconference)

Sally Meadows, Los Altos

Rob Rennie, Los Gatos

Evelyn Chua, Milpitas

Bryan Mekechuk, Monte Sereno

Tanya Carothers, Morgan Hill (Participated via teleconference through 7:52 p.m.)

Yvonne Martinez Beltran, Morgan Hill (Joined and participated via teleconference at 7:52 p.m.)

Margaret Abe-Koga, Mountain View

Larry Klein, Sunnyvale

Otto Lee, Santa Clara County

Absent:

None.

Public Comment on Matters Not Listed on the Agenda

No speakers.

Consent Calendar

There were no questions or comments from the Board; there were no requests from the public to speak on any matter on the Consent Calendar.

1a) Approve Minutes of the February 8, 2023, Board of Directors Meeting

1b) Receive January 2023 Treasurer Report

- 1c) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Positions
- 1d) Executive Committee Report
- 1e) Finance and Administration Committee Report
- 1f) Audit Committee Report
- 1g) Legislative Ad Hoc Committee Report
- 1h) California Community Power Report

MOTION: Director Mekechuk moved and Director Chua seconded the motion to approve the Consent Calendar, Items 1a through 1h.

The motion carried unanimously by verbal roll call vote.

Regular Calendar

2) Receive Audit Results and Accept the Findings from Independent Auditor (Action)

Amrit Singh, CFO and Director of Administrative Services, introduced the item and Kellin Gilbert, lead Audit Partner of Pisenti & Brinker LLP, who conducted an audit of the years ended September 30, 2022 and 2021 SVCE financial statements. Mr. Gilbert provided a presentation that included: the results of the current year audit, which was an unmodified opinion and no significant deficiencies in internal control; an outline of roles and responsibilities for management and auditor; risk assessment procedures; audit procedures; audit procedures for a single audit, which was new for 2022; and required board communications.

Director Mekechuk, Audit Committee Chair, provided comments on the audit process and results.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment.

MOTION: Director Lee moved and Director Klein seconded the motion to receive the Year-End Financial Statements and accept the findings from the Independent Auditor's Report for the Fiscal Year 2021-22.

The motion carried unanimously by verbal roll call vote.

3) CEO Report (Discussion)

CEO Girish Balachandran addressed the following topics in his report:

- 1) Introduction of SVCE's new Decarbonization Management Analyst, Doug Bernard, who provided brief welcome comments;
- 2) A hiring update on new employees who would be joining in the coming months;
- 3) An update on hydro;
- 4) A preview of contracts that would be coming to the Board of Directors for approval; and
- 5) An update on Diablo Canyon.

CEO Balachandran responded to a question from Dir. Mekechuk regarding future office real estate given the growth of the organization and the status of in-person and remote work.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment.

4) Adopt Resolution Approving the Mid-Year 2022-23 Adjusted Operating Budget (Action)

Director Martinez Beltran joined the meeting during Item 4 and Alternate Director Carothers left the meeting.

Amrit Singh, CFO and Director of Finance and Administrative Services, provided a presentation on the Mid-Year 2022-23 Adjusted Operating Budget. CFO Singh's presentation included a review of the budget timeline, addressed changes since the adoption of the annual budget, a comparison of mid-year and annual adopted budgeted key line items, a review of updated SVCE margin from December rate change, a review of updates to energy expenses, a review on reserve projections, and a staffing update.

Staff responded to board member questions regarding rates and their effect on reserves, potential penalty costs included in the mid-year budget, customer participation rate, clarification on rate savings, assumptions for energy demand, demand growth projections, fiscal year start date, and resource adequacy costs.

MOTION: Director Rennie moved and Vice Chair Walia seconded the motion to adopt Resolution 2023-04 approving the mid-year 2022-23 Adjusted Operating Budget that projects contribution of \$73.4 million to the reserves.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment.

The motion carried unanimously by verbal roll call vote.

Board Member Announcements and Future Agenda Items

Chair Tyson announced the Bay Area Air Quality Management (BAAQMD) would be having a meeting March 15, 2023 to discuss bay area district standards for NOx emissions and noted he would be speaking in support of the vote.

Director Abe-Koga announced the BAAQMD board would be looking at Regulation 9 Rule 4 and Regulation 9 Rule 6 that relate to nitrogen oxides from space heater furnaces and water heaters and noted the amendment would ban replacement of these gas appliances starting in 2027.

Director Lee confirmed with legal counsel that there would be no potential conflict with him or Director Abe-Koga's vote at the BAAQMD meeting, and clarified the proposed amendment is about NOx, not gas stoves, and is focused on replacement of water heaters.

Director Klein announced the City of Sunnyvale's City Hall would be opening later in the month, and a ribbon cutting event would be taking place on April 3rd, 2023, with a bigger celebration in the fall.

Director Chua announced the City of Milpitas' Energy and Environmental Sustainability Commission was busy prepping for Earth Day on April 22, 2023.

Director Mekechuk commented he serves on the Santa Clara County Recycling and Solid Waste Reduction Commission and an agenda item was recently presented on biogas; Director Mekechuk requested SVCE staff look at the staff report for awareness and a potential opportunity.

Director Martinez Beltran shared the American Association of University Women (AAUW) young women leaders had an experts talk February 28, 2023 on climate change with guest speakers.

Adjourn

Chair Tyson adjourned the meeting at 8:23 p.m.

ATTEST:

Andrea Pizano, Board Secretary



TREASURER REPORT

**Fiscal Year to Date
As of February 28, 2023**

(Preliminary & Unaudited)

Issue Date: April 12, 2023

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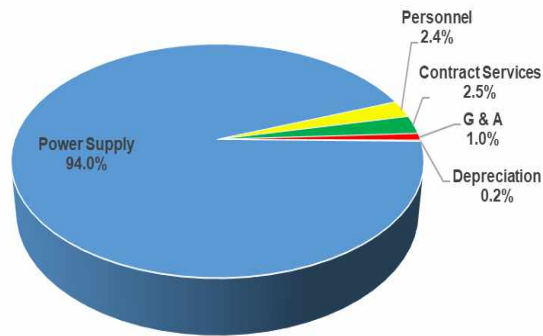
SILICON VALLEY CLEAN ENERGY AUTHORITY
Financial Statement Highlights* (\$ in 000's)

Financial Highlights for the month of February 2023:

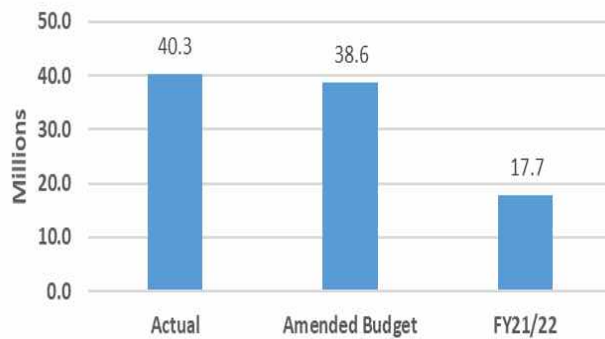
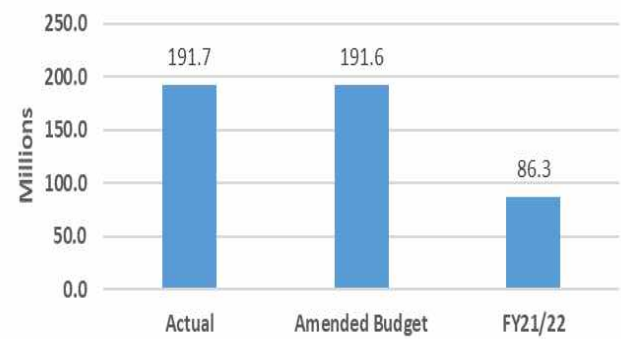
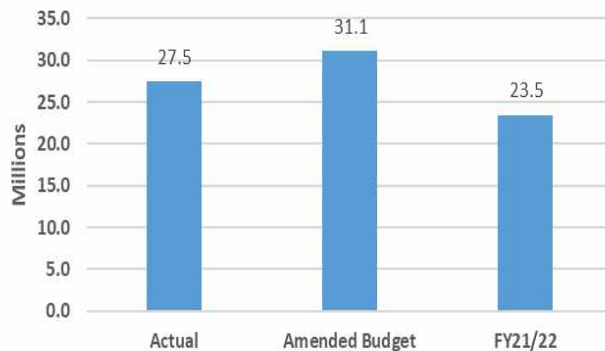
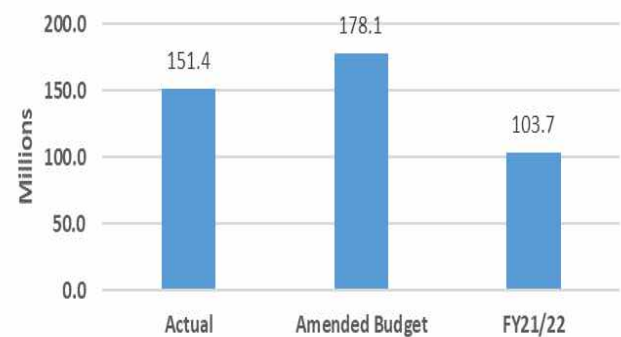
- > SVCE operations resulted in a change in net position of \$13.3 million for the month of February and \$42.5 million for fiscal-year-to-date (FYTD).
- > Retail GWh sales for the month landed 5.3% above budget.
- > FYTD operating margin of \$50.2 million or ~26.1% is above amended budget expectations of 13.1% operating margin for the fiscal year to date.
- > FYTD Power Supply costs are -14.6% below mid-year budget.
- > SVCE is investing ~93.4% of available funds generating FYTD interest/divident income of \$1.5 million.

Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Actual	10,608	10,380	2,026	6,211	13,295	-	-	-	-	-	-	-	42,520	73,365
Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Energy & REC's	18,322	15,903	13,022	10,566	9,996								67,809	
Wholesale Sales	(976)	(300)	(436)	-	-								(1,711)	
Capacity	4,101	4,063	4,228	2,207	2,360								16,958	
CAISO Charges	(538)	3,364	10,935	2,124	9,626								25,510	
NEM Expense	204	(150)	(438)	(510)	(136)								(1,030)	
Charge/Credit (IST/Net Rev)	2,104	(1,060)	8,054	21,448	4,167								34,712	
Net Power Costs	23,218	21,819	35,365	35,834	26,012	-	-	-	-	-	-	-	142,249	392,436
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Capital Expenditures	34	-	4	-	17								55	200
Energy Programs	73	182	898	156	158								1,466	15,007
Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Retail Sales Actual	299	296	341	341	311								1,588	
Retail Sales Budget	315	308	331	336	295	309	290	313	340	358	369	342	3,907	3,907

* The financial results in this report are preliminary and subject to change pending closing of the books for the fiscal year. Any potential changes are not expected to be significant.

YTD EXPENSES**Other Statistics and Ratios**

Working Capital	\$261,244,931
Current Ratio	7.3
Operating Margin	25.8%
Expense Coverage Days	194
Long-Term Debt	\$0
Total Accounts	277,956
Opt-Out Accounts (Month)	144
Opt-Out Accounts (FYTD)	379
Opt-Up Accounts (Month)	(36)
Opt-Up Accounts (FYTD)	(41)

Retail Sales - Month**Retail Sales - YTD****Controllable O&M - Month****Controllable O&M - YTD**

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of February 28, 2023

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 207,331,746
Accounts Receivable, net of allowance	42,024,693
Accrued Revenue	28,570,083
Other Receivables	2,250,493
Prepaid Expenses	1,601,459
Deposits	20,860,389
Restricted cash	162,553

Total Current Assets **302,801,416**

Noncurrent assets

Capital assets, net of depreciation	360,845
Lease asset, net of amortization	1,123,500
Deposits	45,130

Total Noncurrent Assets **1,529,475**

Total Assets **304,330,891**

LIABILITIES

Current Liabilities

Accounts Payable	727,715
Accrued Cost of Electricity	30,315,117
Other accrued liabilities	1,151,029
User Taxes and Energy Surcharges due to other gov'ts	1,306,608
Supplier securit deposits	7,400,000
Lease liability	493,463

Total Current Liabilities **41,393,932**

Noncurrent Liabilities

Supplier security deposits	7,031,250
Lease liability	702,255

Total noncurrent liabilities **7,733,505**

Total Liabilities **49,127,437**

NET POSITION

Net investment in capital assets	288,627
Restricted for security collateral	162,553
Unrestricted (deficit)	254,752,274
Total Net Position	\$ 255,203,454

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2022 through February 28, 2023

OPERATING REVENUES

Electricity Sales, Net	\$ 191,106,026
GreenPrime electricity premium	609,180
Other income	25,406

TOTAL OPERATING REVENUES	<u>191,740,612</u>
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OPERATING EXPENSES

Cost of Electricity	142,249,084
Contract services	3,852,391
Staff compensation and benefits	3,587,727
Other operating expenses	1,453,899
Depreciation	252,732

TOTAL OPERATING EXPENSES	<u>151,395,833</u>
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OPERATING INCOME(LOSS)	<u>40,344,779</u>
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NONOPERATING REVENUES (EXPENSES)

Grant income	716,553
Interest Income	1,471,800
Financing costs	(13,200)

TOTAL NONOPERATING REVENUES (EXPENSES)	<u>2,175,153</u>
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CHANGE IN NET POSITION	42,519,932
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Net Position at beginning of period	<u>212,683,522</u>
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Net Position at end of period	<u>\$ 255,203,454</u>
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SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS October 1, 2022 through February 28, 2023

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 205,441,253
Other operating receipts	16,819,496
Payments to suppliers for electricity	(171,216,309)
Payments for other goods and services	(6,442,660)
Payments for staff compensation and benefits	(3,510,782)
Tax and surcharge payments to other governments	(3,580,721)
Net cash provided (used) by operating activities	<u>37,510,277</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Grant revenue received	716,553
Finance costs paid	(1,750)
Net cash provided (used) by financing activities	<u>714,803</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(38,354)</u>
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CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>1,471,800</u>
Net change in cash and cash equivalents	39,658,526
Cash and cash equivalents at beginning of year	<u>167,835,773</u>
Cash and cash equivalents at end of period	<u>\$ 207,494,299</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 207,331,746
Restricted cash	162,553
Cash and cash equivalents	<u>\$ 207,494,299</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)

October 1, 2022 through February 28, 2023

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

Operating Income (loss)	\$ 40,344,779
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	252,732
(Increase) decrease in net accounts receivable	13,638,529
(Increase) decrease in other receivables	(2,168,779)
(Increase) decrease in accrued revenue	(3,061,385)
(Increase) decrease in prepaid expenses	(623,531)
(Increase) decrease in current deposits	(295,068)
Increase (decrease) in accounts payable	(296,945)
Increase (decrease) in accrued cost of electricity	(15,729,813)
Increase (decrease) in accrued liabilities	(152,921)
Increase (decrease) in energy settlements payable	9,990,068
Increase (decrease) in taxes and surcharges due to other governments	(387,389)
Increase (decrease) in supplier security deposits	<u>(4,000,000)</u>
Net cash provided (used) by operating activities	<u>\$ 37,510,277</u>

**SILICON VALLEY CLEAN ENERGY AUTHORITY
BUDGETARY COMPARISON SCHEDULE
October 1, 2022 through February 28, 2023**

	FYTD	FYTD	Variance		FY 2022-23	FY 2022-23
	Actual	Amended Budget	\$	%	Amended Budget	Remaining Budget
OPERATING REVENUES						
Energy Sales	\$191,822,579	\$191,018,118	\$804,461	0%	\$522,853,000	\$331,030,421
Green Prime Premium	609,180	530,207	78,973	15%	1,055,000	445,820
Other Income	25,406	20,833	4,573	22%	50,000	24,594
TOTAL OPERATING REVENUES	192,457,165	191,569,158	888,007	0%	523,958,000	331,500,835
ENERGY EXPENSES						
Power Supply	142,249,084	166,529,745	(24,280,661)	-15%	392,436,000	250,186,916
Operating Margin	50,208,081	25,039,413	25,168,668	101%	131,522,000	81,313,919
OPERATING EXPENSES						
Data Management	1,328,696	1,421,875	(93,179)	-7%	3,413,000	2,084,304
PG&E Fees	490,714	612,500	(121,786)	-20%	1,470,000	979,286
Salaries & Benefits	3,587,727	4,702,033	(1,114,306)	-24%	11,285,000	7,697,273
Professional Services	1,166,338	3,403,819	(2,237,481)	-66%	8,016,000	6,849,662
Marketing & Promotions	184,245	364,477	(180,232)	-49%	862,000	677,755
Notifications	46,002	54,688	(8,686)	-16%	131,000	84,998
Lease	214,490	218,750	(4,260)	-2%	525,000	310,510
General & Administrative	619,382	773,806	(154,424)	-20%	1,857,000	1,237,618
TOTAL OPERATING EXPENSES	7,637,594	11,551,948	(3,914,354)	-34%	27,559,000	19,921,406
OPERATING INCOME/(LOSS)	42,570,487	13,487,465	29,083,022	216%	103,963,000	61,392,513
NON-OPERATING REVENUES						
Investment Income	1,471,800	1,157,913	313,887	27%	3,870,000	2,398,200
TOTAL NON-OPERATING REVENUES	1,471,800	1,157,913	313,887	27%	3,870,000	2,398,200
NON-OPERATING EXPENSES						
Financing	1,750	1,250	500	40%	3,000	1,250
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	55,206	83,333	(28,127)	-34%	200,000	144,794
Transfer to Programs Fund	9,765,000	9,765,000	-	0%	9,765,000	-
Nuclear Allocation	1,900,000	1,900,000	-	0%	1,900,000	-
Multi Family Discount Programs	9,500,000	9,500,000	-	0%	9,500,000	-
Electrification Discount Programs	9,500,000	9,500,000	-	0%	9,500,000	-
Transfer to CRCR Fund	3,600,000	3,600,000	-	0%	3,600,000	-
TOTAL OTHER USES	34,320,206	34,348,333	(28,127)	0%	34,465,000	144,794
NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE	\$9,720,331	-\$19,704,205	\$29,424,536	-149%	\$73,365,000	

**SILICON VALLEY CLEAN ENERGY AUTHORITY
PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2022 through February 28, 2023**

	<u>Amended BUDGET</u>	<u>ACTUAL</u>	<u>ADOPTED BUDGET REMAINING</u>	<u>ACTUAL/ ADOPTED BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfers in - General Programs	\$ 9,765,000	\$ 9,765,000	\$ -	100.0%
Transfers in - Nuclear Allocation	\$ 1,900,000	\$ 1,900,000	\$ -	100.0%
Transfers in - Multi-Family DI	\$ 9,500,000	\$ 9,500,000	\$ -	100.0%
Total	\$ 21,165,000	\$ 21,165,000	\$ -	
EXPENDITURES & OTHER USES:				
Program expenditures	15,007,082	1,466,298	13,540,784	9.8%
Net increase (decrease) in fund balance	<u><u>\$ 6,157,918</u></u>	<u><u>\$19,698,702</u></u>		
Fund balance at beginning of period		28,536,229		
Fund balance at end of period		<u><u>\$48,234,931</u></u>		

**CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2022 through February 28, 2023**

	<u>Amended BUDGET</u>	<u>ACTUAL</u>	<u>ADOPTED BUDGET REMAINING</u>	<u>ACTUAL/ ADOPTED BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund	\$ 3,600,000	\$ 3,600,000	\$ -	100.0%
EXPENDITURES & OTHER USES:				
Customer bill relief credit	3,600,000	-	3,600,000	0.0%
Other program expenditures	3,119,875	-	3,119,875	0.0%
Total Program expenditures	<u>6,719,875</u>	<u>-</u>	<u>6,719,875</u>	
Net increase (decrease) in fund balance	<u><u>\$ (3,119,875)</u></u>	<u><u>3,600,000</u></u>		
Fund balance at beginning of period		7,982,993		
Fund balance at end of period		<u><u>\$11,582,993</u></u>		

**ELECTRIFICATION DISCOUNT FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2022 through February 28, 2023**

	<u>Amended BUDGET</u>	<u>ACTUAL</u>	<u>ADOPTED BUDGET REMAINING</u>	<u>ACTUAL/ ADOPTED BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund *	\$ 9,500,000.00	\$ 9,500,000.00	\$ -	100.0%
EXPENDITURES & OTHER USES:				
Program expenditures *	100,000	-	100,000	0.0%
Net increase (decrease) in fund balance	<u><u>\$ 9,400,000</u></u>	<u><u>9,500,000</u></u>		
Fund balance at beginning of period		-		
Fund balance at end of period		<u><u>\$9,500,000</u></u>		

SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND

BUDGET RECONCILIATION TO STATEMENT OF

REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2022 through February 28, 2023

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 9,720,331
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(252,732)
Subtract program expense not in operating budget	(1,466,298)
Add back GASB 87 expenses not in operating budget	198,425
Add back transfer to Program fund	34,265,000
Add back capital asset acquisition	55,206
Change in Net Position	<u>42,519,932</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2022 through February 28, 2023

	October	November	December	January	February	March	April	May	June	July	August	September	YTD
OPERATING REVENUES													
Electricity sales, net	\$ 35,283,024	\$ 33,596,659	\$ 39,756,116	\$ 42,320,931	\$ 40,149,296								\$ 191,106,026
Green electricity premium	133,572	123,147	130,539	120,693	101,229								609,180
Other Income	2,250	15,255	-	2,250	5,651								25,406
Total operating revenues	35,418,846	33,735,061	39,886,655	42,443,874	40,256,176	-	-	-	-	-	-	-	191,740,612
OPERATING EXPENSES													
Cost of electricity	23,218,378	21,819,493	35,364,953	35,834,118	26,012,142								142,249,084
Staff compensation and benefits	656,536	673,219	792,543	742,292	723,137								3,587,727
Data manager	265,853	265,687	265,535	265,615	266,006								1,328,696
Service fees - PG&E	98,200	98,021	98,152	98,182	98,159								490,714
Consultants and other professional fees	410,507	374,917	575,873	298,921	372,763								2,032,981
Other operating expenses	200,337	182,040	881,981	206,710	(17,169)								1,453,899
Depreciation	50,510	50,510	50,449	50,397	50,866								252,732
Total operating expenses	24,900,321	23,463,887	38,029,486	37,496,235	27,505,904	-	-	-	-	-	-	-	151,395,833
Operating income (loss)	10,518,525	10,271,174	1,857,169	4,947,639	12,750,272	-	-	-	-	-	-	-	40,344,779
NONOPERATING REVENUES (EXPENSES)													
Grant income	-	-	-	716,553	-	-	-	-	-	-	-	-	716,553
Interest income	91,459	111,370	172,923	549,063	546,985	-	-	-	-	-	-	-	1,471,800
Financing costs	(2,428)	(2,359)	(4,010)	(2,251)	(2,152)	-	-	-	-	-	-	-	(13,200)
Total nonoperating revenues (expenses)	89,031	109,011	168,913	1,263,365	544,833	-	-	-	-	-	-	-	2,175,153
CHANGE IN NET POSITION	\$ 10,607,556	\$ 10,380,185	\$ 2,026,082	\$ 6,211,004	\$ 13,295,105	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 42,519,932

**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2022 through February 28, 2023**

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>
	\$91,459	\$111,370	\$172,923	\$549,063	\$546,985	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<u>\$1,471,800</u>

Portfolio Invested

<i>Average daily portfolio available to invest*</i>	172,316,490	194,339,856	206,387,935	204,912,664	186,285,344								
<i>Average daily portfolio invested</i>	159,489,912	182,240,450	193,643,770	187,505,697	173,917,058								
<i>% of average daily portfolio invested</i>	92.6%	93.8%	93.8%	91.5%	93.4%								

Detail of Portfolio

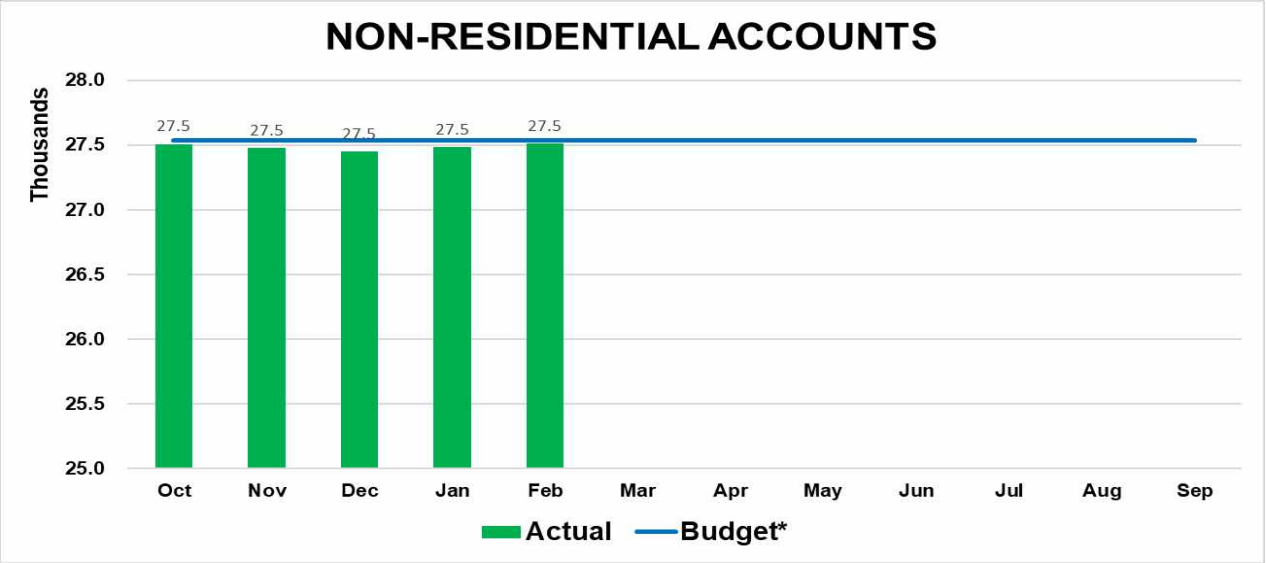
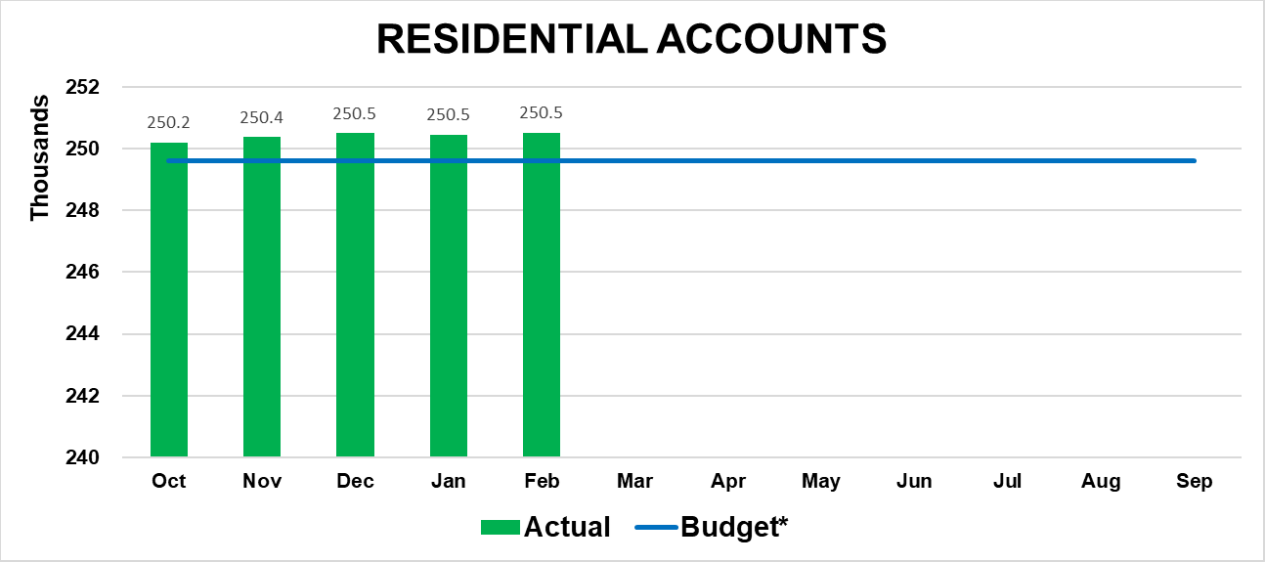
	<u>Annualized Yield</u>	<u>Carrying Value</u>	<u>Interest Earned</u>
<i>Money Market - River City Bank</i>	1.07%	\$10,567,974	\$19,106
<i>ICS Account**</i>	2.32%	\$10,022,948	\$17,597
<i>CAMP Account***</i>	4.73%	\$140,996,992	\$510,145

* Note: Balance available to invest does not include lockbox funds.

** IntraFi Cash Service Account (ICS) - River City Bank

*** California Asset Management Program (CAMP)

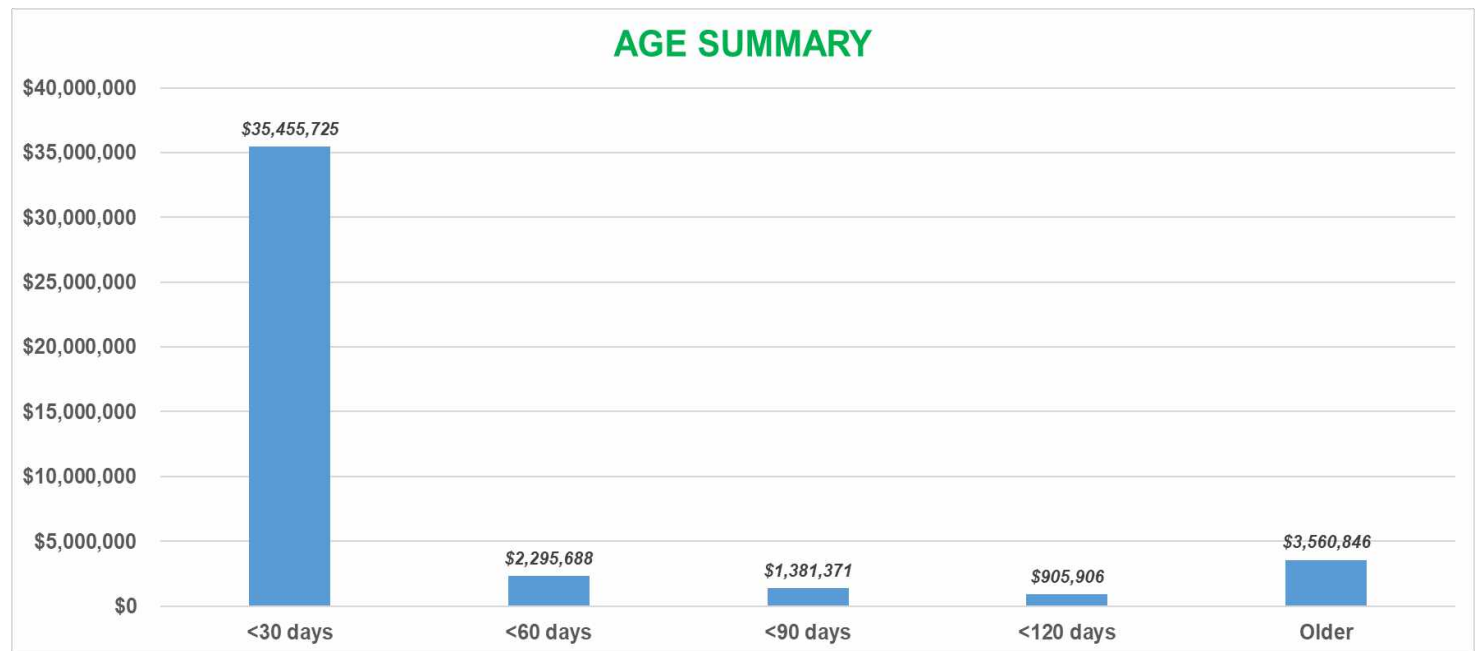
CUSTOMER ACCOUNTS



SILICON VALLEY CLEAN ENERGY AUTHORITY ACCOUNTS RECEIVABLE AGING REPORT

	October	November	December	January	February	March	April	May	June	July	August	September
0 to 30 days	77.4%	76.1%	80.5%	82.3%	81.3%							
31 to 60 days	7.6%	7.9%	5.1%	4.8%	5.3%							
61 to 90 days	4.6%	4.8%	4.0%	2.7%	3.2%							
91 to 120 days	3.4%	2.9%	2.3%	2.5%	2.1%							
Over 120 days	7.0%	8.3%	8.1%	7.8%	8.2%							

Accounts Receivable Days
30 Days
\$43,599,536
TOTAL DUE
Bad Debt % (<i>Budget</i>)
1%





Staff Report – Item 1c

Item 1c: Review Operating Rules and Regulations Amendment to Expand Executive Committee Membership to Up to Six Board Members

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 4/12/2023

RECOMMENDATION

Staff recommends the SVCE Board of Directors review the proposed amendment to SVCE's Operating Rules and Regulations (ORR) to expand Executive Committee membership to up to six Board members.

EXECUTIVE COMMITTEE RECOMMENDATION

The Executive Committee met March 24, 2023 and voted in favor of recommending the Board approve the proposed amendment to the ORR to expand membership of the Executive Committee to up to six Board members.

BACKGROUND

SVCE's ORR were first adopted in June 2016 as the Authority was in its infancy with the intent that they can be expanded as the board further addressed its operations and policies.

The ORR have been previously amended to include/revise:

- Regular meeting location;
- Authorization for the Chair of the Board to designate an alternative meeting place within the jurisdiction of the authority after consultation with the Chief Executive Officer on available meeting locations in the event that the Cupertino Community Hall is not available for a regular or adjourned regular meeting;
- Changing the Date of the Annual Meeting and the Appointment of Officers and Committee Members and Conforming the Provisions Regarding the Holding of Regular Meetings to Board Resolution Nos. 2016-14 and 2017-11;
- Defining unexcused absences from board meetings;
- Including reference to SVCE's Code of Ethics Policy;
- Clarification of general Committee Membership;
- Clarification of Executive Committee appointments in January of each year; and
- Addition of Chair and Vice Chair Vacancy language.

The ORR was last amended in January 2021.

ANALYSIS & DISCUSSION

The existing ORR states the Executive Committee consists of five Board members (Article 4, Section 2). Staff would like to change this to identify that up to six Board members can make up the Executive Committee. Changing this language allows flexibility in the event the Board would like to elect six members instead of the current five, and an opportunity for other board members to express interest in membership with an additional seat. SVCE's other Brown Act committees (Finance and Administration Committee, Audit Committee) allow up to six members to participate.

Agenda Item: 1c**Agenda Date: 4/12/2023**

Below is the proposed language change:

Article 4, Section 2

*Executive Committee. There shall be an Executive Committee consisting of **up to six** Board members. The duties of the Executive Committee shall be to review and provide advice to the Chief Executive Officer and the entire Board on policy, operational and organizational matters and perform such other responsibilities, tasks or activities as delegated to it by the Board.*

Following the Board's review of the proposed amendment, staff will follow the ORR amendment guidelines as outlined within the ORR to provide notice of the proposed amendment at least 10 days prior to the May 10, 2023 Board of Directors meeting where there will be an item for the Board of Directors to approve the change. Staff will also be bringing an item to the May meeting to appoint a sixth member to the current 2023 Executive Committee.

ALTERNATIVE

Staff is open to suggestions from the committee regarding any clarifications or changes that should be made to SVCE's existing ORR.

FISCAL IMPACT

No fiscal impact as a result of reviewing the proposed ORR amendment.

ATTACHMENT

1. SVCE Operating Rules and Regulations Amendments Draft (redline)

SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING RULES AND REGULATIONS

ARTICLE I

FORMATION

The Silicon Valley Clean Energy Authority (the “Authority”) was established on March 31, 2016 pursuant to the execution of the Silicon Valley Clean Energy Authority Joint Powers Agreement (the “Agreement”) by the County of Santa Clara, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Monte Sereno, Morgan Hill, Mountain View, Saratoga and Sunnyvale and the Towns of Los Altos Hills and Los Gatos. The members of the Authority are referred to as Party or Parties in these Operating Rules and Regulations. As defined by the Agreement, these Operating Rules and Regulations consist of rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

ARTICLE II

PURPOSES

The Authority is formed to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. These programs include but are not limited to the establishment of a Community Choice Aggregation Program known as Silicon Valley Clean Energy in accordance with the terms of the Agreement.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Appointment of Chair and Vice-Chair. The Board shall appoint from among themselves by majority vote a Chair and Vice-Chair. The Chair and Vice-Chair shall be appointed for one-year terms expiring at the annual meeting held in January of each year. As provided by the Agreement, there are no limits on the number of terms that a Board member may serve as Chair or Vice-Chair.

Section 2. Appointment of Secretary and Treasurer. The Secretary and Treasurer shall be appointed by the Board for one-year terms expiring at the annual meeting held in January of each year.

Section 3. Extension of Term of Office. If for any reason, the appointment of a Board officer is not made in January of any year, such officer shall continue to serve in his or her position until an appointment is made at a meeting of the Board.

Section 4. Removal of Officers. An officer of the board shall be subject to removal as an officer of the board at any time for any reason by a majority vote of the entire Board.

Section 5. Removal of Board Members for Cause. A Director may be removed by the Board for cause. Cause shall be defined for the purposes of this section as follows:

- a. Unexcused absences from three consecutive Board meetings. Board members shall make every effort to notify the Chair and/or Board Clerk no later than 24 hours prior to any regular meeting of his/her absence. The failure to give such notice shall be deemed an unexcused absence unless the failure to give timely notice was due to emergency circumstances.
- b. Unauthorized disclosure of confidential information or documents from a closed session or the unauthorized disclosure of information or documents provided to the Director on a confidential basis and whose public disclosure may be harmful to the interests of the Authority.
- c. Failure to comply with SVCE's Code of Ethics Policy.

Written notice shall be provided to the Director proposed for removal and the governing body that appointed such Director at least thirty days prior to the meeting at which the proposed removal will be considered by the Board. The notice shall state the grounds for removal, a brief summary of the supporting facts, and the date of the scheduled hearing on the removal. The Director proposed for removal shall be given an opportunity to be heard at the removal hearing and to submit any supporting oral or written evidence. A Director shall not be removed for cause from the Board unless two-thirds of all Directors on the Board (excluding the Director subject to removal) vote in favor of the removal.

ARTICLE IV

COMMITTEES

Section 1. Establishment of Committees. The Executive Committee and all other Committees of the Board shall be selected as provided by Sections 4.6 and 4.7 of the Agreement. Each duly established Committee may establish any Standing or Ad Hoc Committees determined to be appropriate or necessary. The duties and authority of all Committees shall be subject to the approval and direction of the Board. The term of office for each Committee established by the Board shall be one year. The Executive Committee members shall be appointed at the annual meeting in January with all other Committee members appointed in February. There are no limits on the number of terms that a Director may serve on a Committee. If for any reason, the appointment of Committee members is not made at either the January or February meeting of the Board in any year as provided above, such Committee members shall continue to serve in their positions until an appointment is made at a meeting of the Board. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. Except for the Executive Committee, alternate Directors may be appointed by the Board to Committees. However, for each Committee, not more than one Committee member shall represent a particular member agency.

Section 2. Executive Committee. There shall be an Executive Committee consisting of ~~five~~^{up to six} Board members. The duties of the Executive Committee shall be to review and provide advice to the Chief Executive Officer and the entire Board on policy, operational and organizational matters and perform such other responsibilities, tasks or activities as delegated to it by the Board.

ARTICLE V

MEETINGS

Section 1. Regular Meetings. The regular meetings of the Board of Directors of Authority shall be held on the second Wednesday of each month at the hour of 7 p.m. at the Cupertino Community Hall, located at 10350 Torre Avenue, in Cupertino, California. In the event that Cupertino Community Hall is not available for a regular or adjourned regular meeting, the Chair of the Board may designate an alternative meeting place within the jurisdiction of the Authority after consultation with the Chief Executive Officer on available meeting locations.

Section 2. Special Meetings. Special meetings of the Board may be called at any time and may be held in any location within the jurisdiction of the Authority as provided by the notice for the special meeting.

Section 3. Annual Meeting. The Board shall hold an annual meeting in January of each year at which time it will appoint Board officers and Executive Committee members.

Section 4. Open Meeting Requirements. The meetings of the Board, the Executive Committee and all other committees established by the Board shall be governed by the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).

Section 5. Chair and Vice Chair Vacancies. At any meeting of the Board or a committee where the Chair and Vice Chair are not present, the previous Chair of that body will serve as Interim Chair. If that person is not present, the longest serving member of that body will serve as Interim Chair. If it is a new committee, members will draw lots to determine who will serve as Interim Chair.

ARTICLE VI

AMENDMENTS

These Operating Rules and Regulations may be amended by a majority vote of the full membership of the Board but only after such amendment has been proposed at a regular meeting and acted upon at the next or later regular meeting of the Board for final adoption. The proposed amendment shall not be finally acted upon unless each member of the Board has received written notice of the amendment at least 10 days prior to the date of the meeting at which final action on the amendment is to be taken. The notice shall include the full text of the proposed amendment.



Staff Report – Item 1d

Item 1d: Authorize the Chief Executive Officer to Execute an Amended and Restated PPA for a Previously Executed Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc. in an Amount Not to Exceed \$7,400,000 and for a Modified Term from January 1, 2024 through December 31, 2034

From: Girish Balachandran, Chief Executive Officer

Prepared by: Charles Grinstead, Senior Manager of Power Resources
 Monica Padilla, COO and Director of Power Resources
 Justin Zagunis, Director of Decarbonization Programs and Policy

Date: 4/12/2023

RECOMMENDATION

Staff recommends that the SVCE Board of Directors authorize the Chief Executive Officer to execute an Amended and Restated Distributed Energy Storage Agreement (DESA) for Resilience and Capacity with Sunrun Inc. (Attachment 1) with the following parameters:

1. Modify term of DESA from December 31, 2022 through December 31, 2032 to January 1, 2024 through December 31, 2034;
2. Change the minimum capacity amount from 3750 to 1000; and
3. Total amount not-to-exceed remains at \$7,400,000, inclusive.

In addition to the parameters mentioned above, the First Amendment to the Sunrun DESA has several other non-substantive amendments. The amendments are necessary to ensure that capacity contemplated in the Sunrun DESA can be implemented, otherwise the DESA will terminate.

BACKGROUND

In 2019, SVCE issued a joint solicitation with three other load serving entities (LSEs) (East Bay Community Energy (EBCE), Peninsula Clean Energy (PCE) & Silicon Valley Power (SVP)) for resource adequacy (RA) from customer-sited battery storage backup systems. The joint solicitation targeted over 30MW of RA across the four LSEs, from both residential and commercial systems, which was estimated to translate to approximately 6,000 homes and hundreds of businesses in Alameda, San Mateo, and Santa Clara counties. The general premise was that compensation for grid services from these systems during times of regular grid operation can help buy down the system cost for the end customer who can use the battery storage systems during grid outages, such as Public Safety Power Shutoff (PSPS) events.

SVCE negotiated an agreement with Sunrun to install 1-7.5 MW (4-30 MWh) of solar and battery energy storage systems on single family and multi-family residences in SVCE service territory, with a minimum of 20% installed for customers in multi-family residences that are low income, on CARE, FERA or Medical Baseline rates or located in a disadvantaged community. As a part of the contract, SVCE agreed to assist with some marketing and purchase grid services to help meet RA compliance requirements from these systems during times of regular grid operation.

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The SVCE Board of Directors approved Resolution 2020-19 delegating authority to the SVCE Executive Committee to review, approve and authorize the execution of contracts with Sunrun Inc. for resource adequacy customer-sited storage systems. The agreement with Sunrun Inc. was approved by the SVCE Executive Committee during a special meeting on July 29, 2020 for an amount not to exceed \$7,400,000, and for a capacity delivery term from December 31, 2022 through December 31, 2032.

ANALYSIS & DISCUSSION**Original Contract:**

The aggregation of distributed behind-the-meter (BTM) batteries to deliver both load modification and resilience was a first-of-its-kind initiative. Specifically, the negotiated contract is an innovative alternative approach to meeting RA obligation through reducing peak demand through the coordinated dispatch of customer resources. This so-called "load modifying resource", which is a capacity product, will be dispatched daily during SVCE's highest peak hours to decrease SVCE's RA obligation and reduce wholesale energy procurement volumes. The capacity payment to Sunrun allowed them to offer a promotional discount to customers for enrolling, to reduce the cost of batteries through improved pricing and encourage customer participation. SVCE included information about this program and a link to Sunrun's enrollment page on its website and via email marketing channels.

Led by EBCE, the LSEs worked with the California Energy Commission (CEC) to develop this load modification approach to meet our RA obligation: every year, SVCE will submit a peak demand forecast to the CEC, reflecting the load reduction associated with energy storage systems under this contract, to set SVCE's annual RA procurement obligation. The reduction in SVCE'S peak load reduces RA obligations and wholesale energy procurement volumes during dispatch windows. This approach with the CEC is new, and not fully tested yet.

This product also helps with meeting SVCE's RA compliance obligations and need to procure "shed demand response", which is called for in the state's integrated resource plan (IRP) reference system plan. This agreement is a major step forward in meeting SVCE's organizational priorities and strategic goals, including supporting innovation, our decarbonization mission and enhanced resiliency for our communities.

Contract Amendment:

Sunrun and SVCE have both learned more about needs and challenges associated with utilizing this innovative approach for RA value since the original contract was signed. Sunrun observed lower uptake than anticipated and encountered issues with interconnections rules for multifamily storage systems. SVCE developed its understanding of how to present the load modification to the CEC and identified a different set of dispatch requirements desired in the contract to capture both RA and energy values. Additionally, the landscape has continued to evolve on how load modification assets can be counted and there is a better understanding of the type of reliability events customers may face.

Given the lower-than-expected number of projects that Sunrun has constructed for or enrolled in the program to-date, this amendment reduces the possible size of capacity delivered through the contract to 1000 kW. Further, the requirement for a minimum of 20% of capacity to come from multi-family residences that are low income, on CARE, FERA or Medical Baseline rates or located in a disadvantaged community has been removed – issues with how Pacific Gas and Electric permits energy storage to be connected to multi-family residences kept Sunrun from installing in these sites as planned.

Apart of the amendment effort was to add a performance element to the load modification product, which is being served primarily by customer battery storage resources. Sunrun will still deliver to SVCE a yearly load modification RA product such that it reduces SVCE's RA requirements, however in order to incentivize the dispatch of those storage products, an energy performance mechanism is being added.

ALTERNATIVE

The Board may decide not to direct the CEO to execute Amended and Restated Sunrun DESA and instead terminate the agreement and collect the development deposit or negotiate a settlement. Staff feels the proposed amendments allows for the DESA to move forward and deliver a valuable product to SVCE. And, while the

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amount of capacity contemplated under the Sunrun DESA is small, the lessons learned in implementing this type of innovative product will be instrumental in deploying greater amounts of demand response, resiliency and virtual power plant projects in the future.

STRATEGIC PLAN

Approving the staff recommendation will enable the Sunrun DESA to move forward and supports the goals of the Board adopted Fiscal Year 2022-23 Strategic Plan including:

- Goal 1: Plan for resources to meet SVCE's mission while balancing multiple stakeholder objectives
- Goal 2: Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner
- Goal 3: Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives
- Goal 9, Work with the community to plan for and track achieving energy and transportation GHG reductions of 30% emissions reduction from the 2015 baseline by 2021, 40% by 2025 and 50% by 2030.
- Goal 10: Coordinate development of decarbonization and resilience strategy, lead design of local policy, and design and deploy programs.

FISCAL IMPACT

Approval of staff's recommendation to amend the Sunrun DESA will result in shift in the term of the deliverables from fiscal year (FY) 2022-23 to 2023-24. The expected cost will be included in the FY 23-24 and subsequent year operating budget proposals.

ATTACHMENTS

1. Amended And Restated Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc. in substantively final form
2. Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc.

**AMENDED AND RESTATED BEHIND THE METER
ENERGY STORAGE AGREEMENT FOR RESILIENCE
COVER SHEET**

Seller: Sunrun Inc., a Delaware corporation

Buyer: Silicon Valley Clean Energy Authority, a California joint powers authority

Execution Date:

Description of Portfolio: Distributed energy storage systems at residential locations operated by Seller to provide Load Modification for Buyer and resiliency benefits for Customers.

Load Modification Contract Amount:

Minimum of ■■■ kW (“Minimum Commitment Load Modification Amount”) for 4 hours per day
Not to exceed ■■■ kW (“Maximum Commitment Load Modification Amount”) for 4 hours per day

Energy Contract Amount:

Minimum of ■■■ kWh (“Minimum Commitment Energy Amount”) per day
Not to exceed ■■■ kWh (“Maximum Commitment Energy Amount”) per day

Energy Contract Price (ECP): \$■■■/kWh

Load Modification Contract Price (LMCP): \$■■■/kW-month

Milestones:¹

Milestone	Date ²
Customer Agreements Signed	10% of LM Contract Amount by: January 15, 2022 25% of LM Contract Amount by: September 15, 2022 50% of LM Contract Amount by: July 15, 2023 Remaining LM Contract Amount by: October 15, 2023

¹ NTD: Host customer-related matters are addressed in Appendix XI; milestones in this agreement focus on other key project development tasks.

² SVCE – WSGR NTD: Milestone dates subject to SVCE review.

Load Modifying Resource Dispatch Plan Submitted	March 2023
Construction Start Deadlines	10% of LM Contract Amount by: March 31, 2022 25% of LM Contract Amount by: November 15, 2022 50% of LM Contract Amount by: August 15, 2023 Remaining LM Contract Amount by: November 15, 2023
Expected Initial Delivery Date of Load Modification	January 1, 2024
Expected Initial Delivery Date of Energy	[__]

Delivery Term: 10 Contract Years

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AMENDED AND RESTATED BEHIND THE METER ENERGY STORAGE AGREEMENT FOR RESILIENCE

This Amended and Restated Behind the Meter Energy Storage Agreement for Resilience (“**Agreement**”) is made by and between Silicon Valley Clean Energy Authority, a California joint powers authority (“**Buyer**”) and Sunrun Inc., a Delaware corporation (“**Seller**”) as of the execution date (“**Execution Date**”), in each case as set forth on the cover sheet (“**Cover Sheet**”) to this Agreement. Seller and Buyer are referred to each individually as a “**Party**” and collectively as the “**Parties**.” For the avoidance of doubt, this Agreement amends and restates in its entirety the Behind the Meter Energy Storage Agreement for Resilience by and between the Parties dated August 14, 2020.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Portfolio; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

1.1 **Contract Definitions.** Capitalized terms used in this Agreement have the following meanings, unless otherwise specified:

“**Additional Reserve Day**” has the meaning set forth in Section 5.1(d).

“**Adjusted Energy Contract Amount**” has the meaning set forth in Section 2.3(b).

“**Adjusted Load Modification Contract Amount**” has the meaning set forth in Section 2.3(c).

“**Affiliate**” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, through one or more intermediaries.

“**Agreement**” has the meaning set forth in the preamble.

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff.

“**Balancing Authority**” has the meaning set forth in the CAISO Tariff.

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any

general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Buyer Group” has the meaning set forth in Section 15.1(a).

“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 Owners that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

“CARB” means the California Air Resources Board or any successor entity performing similar functions.

“CARE” means the California Alternate Rates for Energy Program and any successor thereto.

“CEC” means the California Energy Commission or any successor entity performing similar functions.

“Change of Control” means, except in connection with public market transactions of equity interests of Seller’s Ultimate Parent, any circumstance in which Seller’s Ultimate Parent as of the Execution Date ceases to be the Ultimate Parent or ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means the amount of Energy withdrawn from the Utility Distribution Company’s electrical system, Participating Transmission Owner’s electrical system, the CAISO Grid, or otherwise, to be stored by the Portfolio.

“Claim” has the meaning set forth in Section 15.1(a).

“Collateral Assignment Agreement” has the meaning set forth in Section 18.2(b).

“Committed Load Modifying Capacity” shall have the meaning set forth in Section 5.2(c)(i).

“Committed Load Modifying Energy” shall have the meaning set forth in Section 5.2(c)(i).

“Compliance Obligations” means any capacity procurement Requirements, or associated reliability Requirements, imposed on Load Serving Entities (as defined in the CAISO Tariff) by the CPUC, by the CAISO, by the WECC, by NERC, or by any other Governmental Authority having jurisdiction.

“Conditions Precedent” has the meaning set forth in Section 4.2.

“Confidential Information” has the meaning set forth in Section 20.1.

“Confirmation Notice” means a Downward Change Confirmation Notice or an Upward Change Confirmation Notice, as applicable.

“Construction Delay Cure Period” has the meaning set forth in Section 3.1(c).

“Construction Delay Damages” means daily liquidated damages in an amount equal to [REDACTED]

“Construction Start” means (i) acquisition of all Governmental Approvals necessary for the construction of the applicable Project(s), (ii) engagement of each Contractor, (iii) execution of each required Customer Agreement for such Project(s), and (iv) ordering of all essential equipment and supplies, in each case (i)-(iv), as reasonably necessary so that physical construction of the applicable Projects of the Portfolio may begin and proceed to completion without foreseeable interruption of material duration.

“Construction Start Deadline” has the meaning set forth in the Cover Sheet.

“Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.

“Contractor” means the EPC Contractor and its subcontractors, as well as Seller or Seller’s Affiliates if any such entities are developing, constructing, operating or maintaining the Portfolio during the Term, and any entity or person under contract with Seller or Seller’s Affiliates for the purpose of developing, constructing, operating or maintaining the Portfolio during the Term.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements that replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“Cover Sheet” has the meaning set forth in the preamble to this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPUC” or **“Commission”** means the California Public Utilities Commission or any successor entity performing similar functions.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) 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 or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Customer” means a Person that is a retail electric customer of Buyer.

“Customer Agreement” means Seller’s agreement with a Customer for the installation and operation of a Project as part of the Portfolio.

“Customer Information” means Customer-related information that is subject to CPUC rules, regulations or orders or other applicable Laws regarding customer privacy, including California Public Utilities Code Section 8380 et seq.

“DAC” means disadvantaged community as defined by CPUC regulations and published guidance.

“Damage Payment” means the dollar amount equal to the total amount required to be posted by Seller as Development Security pursuant to Section 10.1.

“Defaulting Party” means the Party that is subject to an Event of Default.

“Delay Damages” [REDACTED]

“Delay Notice” has the meaning set forth in Section 4.1(b)(i).

“Delivered Quantities of Energy” has the meaning set forth in Section 5.2(b)(i).

“Delivered Quantities of Load Modifying Capacity” has the meaning set forth in Section 5.2(c)(ii).

“Delivery Term” has the meaning set forth in Section 2.2(b).

“Delivery Term Security” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED] of the Product Contract Amount that has reached the Initial Delivery Date at the time of calculation.

“Development Security” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED] per kilowatt of the Minimum Commitment Contract Amount.

“Disclosing Party” has the meaning set forth in Section 20.2.

“Disclosure Order” has the meaning set forth in Section 20.2(a).

“Disclosure Request” has the meaning set forth in Section 20.2(b).

“Downward Change Confirmation Notice” has the meaning set forth in Section 6.7(a)(i).

“Downward Change Notice” has the meaning set forth in Section 6.7(a)(i).

“Early Termination Date” has the meaning set forth in Section 7.2(a).

“Electric System Upgrades” means any upgrades, including network upgrades, distribution upgrades, or interconnection facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Portfolio to the Utility Distribution Company’s/Participating TO’s electric system for delivery of Energy from the Portfolio such that the Portfolio can provide Product at all times during the Delivery Term.

“Emergency Alert 2” has the meaning set forth in the CAISO Tariff.

“Emergency Alert 3” has the meaning set forth in the CAISO Tariff.

“Emergency Load Reduction Program” has the meaning set forth in the CAISO Tariff.

“Energy” means single- or three-phase, 60-cycle alternating current electric energy, measured in MWhs.

“Energy Contract Amount” means the amount specified on the Cover Sheet.

“Energy Contract Price” means the amount specified on the Cover Sheet.

“Energy Monthly Payment” or **“EMP”** has the meaning set forth in Section 5.2(b)(ii).

“Energy Shortfall” means any difference between the Delivered Quantities of Energy, and the Committed Load Modifying Energy.

“Energy Shortfall LDs”



“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental Permits and licenses for the Product, and the Product’s and Portfolio’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 or Portfolio, 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, marketable emission trading credits, and 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 a Site or the Portfolio.

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.

“Event of Default” means a Seller’s Event of Default or a Party’s Event of Default.

“Execution Date” has the meaning set forth in the preamble.

“Exigent Circumstance” means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Portfolio or portion thereof.

“Expected Initial Delivery Date” has the meaning set forth on the Cover Sheet.

“FERA” means the Family Electric Rate Assistance Program and any successor thereto.

“FERC” means the Federal Energy Regulatory Commission or any successor entity performing similar functions.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Agreement, but only if and to the extent (x) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation excused thereby, (y) the Party seeking to have its performance obligation excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under the Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (z) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Additionally:

(a) Force Majeure may include:

(i) acts of God, including landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather-related events affecting an entire region which caused failure of performance;

(ii) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Initial Delivery Date;

(iii) sabotage, riot, acts of terrorism, war and acts of public enemy;

(iv) restraint by court order or other Governmental Authority; or

(b) Force Majeure does not include:

(i) COVID-19 related restrictions imposed by Governmental Authorities as currently in place as of the Execution Date;

(ii) a failure of performance of any third party, including Participating TO, Utility Distribution Company, or any other party providing electric interconnection, distribution or transmission service;

(iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

(iv) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Portfolio;

(v) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(vi) Seller's inability to obtain Permits or approvals of any type for the construction, operation or maintenance of the Portfolio, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vii) Seller's inability to complete interconnection by the applicable Expected Initial Delivery Date, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) Seller's inability to obtain sufficient Charging Energy, fuel, power or materials to operate the Portfolio, except if Seller's inability to obtain sufficient Charging Energy, fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(ix) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(x) Seller's failure to obtain Site Control, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(xi) Seller's failure to obtain or retain Customers; or

(xii) any failure of a Customer to perform (whether or not due to Force Majeure affecting a Customer).

"Force Majeure Failure" has the meaning set forth in Section 8.1(d).

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

"Generally Accepted Accounting Principles" means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

"Go to Market Plan" ("GTM Plan") refers to the processes and obligations jointly agreed to by the Parties as set forth in Appendix XI.

"Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, Permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating Permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the development, use and

operation of the Portfolio, including any approvals required under the California Environmental Quality Act.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“IDD Cure Period” has the meaning set forth in Section 4.1(b)(i).

“IDD Delay Damages” means daily liquidated damages in an amount equal to (a) the total Development Security amount required hereunder, divided by (b) [REDACTED].

“Indemnifiable Loss(es)” has the meaning set forth in Section 15.1(a).

“Initial Delivery Date” has the meaning set forth in Section 2.2(b).

“Interconnection Agreement” means the agreement(s) and associated documents (or any successor agreement and associated documentation approved by FERC or the CPUC) by and among Seller or a Customer and, as applicable, the Utility Distribution Company, the Participating Transmission Owner, and CAISO, governing the terms and conditions of the interconnection of the Projects with the Utility Distribution Company’s or CAISO’s grid, including any description of the plan for interconnecting the Projects to the applicable grid.

“Interest Rate” has the meaning set forth in Section 9.2.

“Joint Powers Agreement” means that certain Joint Powers Agreement of Buyer, dated as of March 31, 2016, by and among the City of Campbell, City of Cupertino, City of Gilroy, City of Los Altos, Town of Los Altos Hills, Town of Los Gatos, City of Monte Sereno, City of Morgan Hill, City of Mountain View, County of Santa Clara (Unincorporated Area), City of Saratoga, and the City of Sunnyvale.

“kW” means kilowatt in alternating current, unless expressly stated in terms of direct current.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Term; or any binding interpretation of the foregoing.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Portfolio, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including

tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Portfolio or purchasing equity ownership interests of Seller or its Affiliates for purposes of providing financing or refinancing for the Portfolio, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Portfolio.

“Letter of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Appendix V.

“LIBOR” means the London Interbank Offered Rate for the corresponding deposits of U.S. dollars.

“LM Shortfall” means any difference between the Delivered Quantities of Load Modifying Capacity and the Committed Load Modifying Capacity.

“LM Shortfall LDs”



“Load Modification” or **“LM”** means the reduction of Buyer’s aggregate peak demand forecast pursuant to applicable CEC regulations and published guidance.

“Load Modification Contract Amount” or **“LM Contract Amount”** means the amount specified on the Cover Sheet.

“Load Modification Contract Price” means the amount specified on the Cover Sheet.

“Load Modification Dispatch Plan Deadline” means, with respect to each year of the Delivery Term, March 1, or such other date which is 30 days prior to the date on which Buyer is required to submit its annual aggregate peak demand forecast pursuant to rules and published guidance of the CEC. If the Load Modification Dispatch Plan Deadline is prior to March 1, Buyer shall provide Seller notice of the adjustment 30 days prior to the new deadline.

“Load Modifying Resource” means a behind the meter generation or storage system that is capable of being dispatched to provide Load Modification.

“Load Modifying Resource Dispatch Plan” means a one-year plan, submitted for each calendar year of the Delivery Term, specifying on a month by month basis the hours of day during which the Load Modification Contract Amounts will be delivered from the Portfolio and substantially in the form of Appendix XIII.

“Load Modifying Resource Monthly Payment” or **“LMMP”** has the meaning set forth in Section 5.2(c)(iii).

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of federal or state tax credits, grants, or benefits related to the Portfolio or generation therefrom or any costs or fees related to the Site or Portfolio.

“Low Income” means, with respect to a Customer, that such Customer has a household income at or below eighty percent (80%) of Santa Clara County’s median income or at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Health and Safety Code (H&SC) Section 50093.

“Maximum Commitment Energy Amount” has the meaning set forth in the Cover Sheet.

“Maximum Commitment Load Modification Amount” has the meaning set forth in the Cover Sheet.

“Medical Baseline Program” means the program administered by the Utility Distribution Company that provides a financial benefit to customers who have special energy needs due to qualifying medical conditions, and any successor program thereto.

“Milestones” has the meaning set forth in the Cover Sheet.

“Minimum Commitment Energy Amount” has the meaning set forth in the Cover Sheet.

“Minimum Commitment Load Modification Amount” has the meaning set forth in the Cover Sheet.

“Monthly Payment” means, together, the Energy Monthly Payment and the Load Modifying Resource Monthly Payment.

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MUA Decision” has the meaning set forth in Section 4.2(h).

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour.

“NERC” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 7.2.

“**Notice**” unless otherwise specified in this Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Notice of Claim**” has the meaning set forth in Section 15.2(a).

“**Notify**” means to provide a Notice.

“**Operational Characteristics**” means the operational characteristics set forth in Appendix II.

“**Other Programs**” has the meaning set forth in Section 5.4(f).

“**Partial Initial Delivery Amount**” has the meaning set forth in Section 4.1(c)(ii).

“**Partial Initial Delivery Date**” or “**PIDD**” means the first day of the first calendar month for which Product in the Partial Initial Delivery Amount is delivered; provided that PIDD may not occur until (i) all Conditions Precedent set forth in Article 4 are satisfied, except for the achievement of the Minimum Commitment Contract Amount, and (ii) Seller submits a Partial LMR Dispatch Plan.

“**Partial Load Modifying Resource Dispatch Plan**” or “**Partial LMR Dispatch Plan**” means a plan, submitted for each month of the PIDD Cure Period, specifying on a month by month basis the hours of day during which the Partial Initial Delivery Amounts will be delivered from the Portfolio and substantially in the form of Appendix XIII.

“**Participating Transmission Owner**” or “**Participating TO**” means an entity that (a) owns, operates and maintains transmission lines and associated facilities or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities or entitlements to be made part of the CAISO Grid.

“**Party**” or “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Party’s Event of Default**” has the meaning set forth in Section 7.1(b).

“**Performance Assurance**” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Development Security and Delivery Term Security.

“**Permit**” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**PIDD Cure Period**” has the meaning set forth in Section 4.1(c)(i).

“**Portfolio**” means the energy storage facility consisting of Projects at multiple Sites, as further described in Appendix I, as such may be revised from time to time in accordance with this Agreement.

“**Portfolio Modification**” has the meaning set forth in Section 5.4(e).

“**Prevailing Wage Requirement**” has the meaning set forth in Section 14.5.

“Product” has the meaning set forth in Section 5.1(a).

“Product Contract Amount” means both the Energy Contract Amount and the Load Modification Contract Amount.

“Progress Report” means a reasonably detailed progress report including the items set forth in Appendix III.

“Progress Reporting Form” has the meaning set forth in Section 5.4(d).

“Project” means each behind-the-retail-meter energy storage facility installed at a Site as more particularly described in Appendices I, II, and IX, including all appurtenant facilities, communications and control systems, and equipment, from which Seller has agreed to provide Product to Buyer pursuant to this Agreement.

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements, as such Safeguards and Safety Requirements are generally outlined in Appendix VI.

“Prudent Operating Practice” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to energy storage facilities during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence. Prudent Operating Practices also includes taking reasonable steps to ensure that:

(a) Safeguards are implemented and maintained for the Portfolio and at each Site and are sufficient to address reasonably foreseeable incidents;

(b) equipment, material, and supplies are sufficient and accessible to operate the Portfolio safely and reliably;

(c) operating personnel are trained, equipped, and capable of responsible operation and maintenance of the Portfolio and at each Site, including identifying and responding to system emergencies, emergencies, or Exigent Circumstances originating from or impacting the Portfolio or Site;

(d) the Portfolio’s material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power or energy storage facilities operating in the relevant region; and

(e) the Portfolio is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

“Qualifying Grid Outage” means any actual or planned grid outage affecting a Customer in the Portfolio for any period of time on a given day resulting from (i) a public safety power shutoff event

declared by a utility for the given Customer, (ii) another planned outage communicated by a utility for the given Customer, or (iii) severe weather alert issued by the National Weather Service and affecting said Customer.

“Receiving Party” has the meaning set forth in Section 20.2(b).

“Regulatory Disclosure” has the meaning set forth in Section 20.2(a).

“Reliability Organization” means an “Electric Reliability Organization” as defined in Section 215(a)(2) of the Federal Power Act or a “regional entity” as defined in Section 215(a)(7) of the Federal Power Act.

“Remedial Action Plan” has the meaning set forth in Section 3.6.

“Remediation Event” means the occurrence of any of the following with respect to the Portfolio or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or Requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Portfolio’s operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 11.2, in its reasonable discretion, that the Project Safety Plan is not consistent with the Safety Requirements; or (g) any actual condition related to the Portfolio or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Portfolio or a Site.

“Remediation Period” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) days if Seller is unable to resolve the Remediation Event within the initial ninety (90) day period despite exercising diligent efforts (and Buyer shall not unreasonably withhold approval of such extension).

“Requirements” means Prudent Operating Practices and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CEC, CPUC, CARB, FERC, NERC and WECC.

“Resold Product” has the meaning set forth in Section 5.1(b).

“S&P” means Standard and Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Safeguard” means any procedures, practices, or actions with respect to the Portfolio, a Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

“Safety Remediation Plan” means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

“Safety Requirements” means Prudent Operating Practices, and all applicable safety-related (construed broadly) Requirements.

“**SEC**” means the U.S. Securities and Exchange Commission, or any successor entity performing similar functions.

“**Security Interest**” has the meaning set forth in Section 10.3(a).

“**Seller**” has the meaning set forth in the preamble to this Agreement.

“**Seller’s Event of Default**” has the meaning set forth in Section 7.1(a).

“**Seller’s Initial Portfolio List**” has the meaning set forth in Section 4.2(g).

“**Seller’s Portfolio**” means the Customers and the corresponding Sites assembled by Seller for purposes of delivering the Product to Buyer under this Agreement, as such Seller’s Portfolio may be amended in accordance with this Agreement from time to time.

“**Seller’s Portfolio List**” has the meaning set forth in Section 5.4(d).

“**Serious Incident**” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Portfolio or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than [REDACTED]; (d) release of hazardous material above the limits, or violating the Requirements, established by Permits, codes, standards, regulations, Laws or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“**Settlement Amount**” means an amount equal to the greater of (a) the amount of Delivery Term Security required under this Agreement and (b) the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Shortfall LDs**” means both Energy Shortfall LDs and LM Shortfall LDs.

“**Site(s)**” means the real property on which the Portfolio is located, as identified in Appendix I and Appendix VIII, as updated by Seller pursuant to Section 5.4(d).

“**Site Control**” means that Seller owns the Site and the Portfolio or has demonstrable contractual real property rights to the Site sufficient for the permitting, control, development and operation of the Portfolio.

“**Supply Plan**” has the meaning set forth in the CAISO Tariff.

“**Supplying Party**” has the meaning set forth in Section 20.2(b).

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Term**” has the meaning set forth in Section 2.2(a).

“Terminated Transaction” has the meaning set forth in Section 7.2(a).

“Termination Payment” has the meaning set forth in Section 7.3.

“Transmission Provider” means the CAISO.

“Ultimate Parent” means the [REDACTED]

“Upward Change Confirmation Notice” has the meaning set forth in Section 6.7(a)(ii).

“Upward Change Notice” has the meaning set forth in Section 6.7(a)(ii).

“Utility Distribution Company” has the meaning set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council or its successor entity with similar functions.

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an article, section, paragraph, clause, Party, appendix, or exhibit is a reference to that section, paragraph, clause of, or that Party, appendix, or exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement,

novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(l) the terms "year" and "calendar year" mean the period of months from January 1 through and including December 31; the term "month" means a calendar month unless otherwise indicated, and a "day" means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a "day" may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively;

(m) unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed;

(n) when an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific Standard time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day;

(o) all references to Product mean each and all components of the Product unless the context infers a particular component of Product; and

(p) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2: TERM

2.1 **Effectiveness.** Upon execution by both Parties, this Agreement shall be effective and binding as of the Execution Date.

2.2 **Term.**

(a) The “**Term**” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Term (unless terminated earlier in accordance with the terms of this Agreement).

(b) The “**Delivery Term**” is the period commencing on the Initial Delivery Date and continuing for the number of Contract Years specified on the Cover Sheet. The “**Initial Delivery Date**” is the first day of the first calendar month for which Product in the Product Contract Amounts is delivered; provided that Initial Delivery Date may not occur until satisfaction of the Conditions Precedent set forth in **Article 4** are achieved.

2.3 **Quantity.**

(a) Seller shall deliver to Buyer the Product in the Product Contract Amount. Buyer will compensate Seller for all Product delivered in accordance with **Section 5.2** up to but not exceeding the Maximum Commitment Contract Amount.

(b) If, at the end of the first year of the Delivery Term, Buyer and Seller agree that the Portfolio is capable of delivering Energy in excess of the Maximum Commitment Energy Amount, Buyer and Seller may mutually agree to adjust and increase the Energy Contract Amount (the “**Adjusted Energy Contract Amount**”). Any agreement to an Adjusted Energy Contract Amount shall be in writing and shall document the resulting increase in Delivery Term Security and any other terms of this Agreement impacted by the Adjusted Energy Contract Amount.

(c) If, at the end of the first year of the Delivery Term, Buyer and Seller agree that the Portfolio is capable of delivering Load Modification in excess of the Maximum Commitment Load Modification Amount, Buyer and Seller may mutually agree to adjust and increase the Load Modification Contract Amount (the “**Adjusted Load Modification Contract Amount**”). Any agreement to an Adjusted Load Modification Contract Amount shall be in writing and shall document the resulting increase in Delivery Term Security and any other terms of this Agreement impacted by the Adjusted Load Modification Contract Amount.

ARTICLE 3: PORTFOLIO DEVELOPMENT

3.1 **Portfolio Construction.**

(a) Seller shall develop, design, and construct the Portfolio in timely fashion in order to perform Seller’s obligations under this Agreement.

(b) Seller shall cause Construction Start to occur for the applicable Projects no later than the applicable Construction Start Deadline. Seller shall provide Notice to Buyer certifying the satisfaction of this **Section 3.1(c)** on or before the applicable Construction Start Deadline.

(c) If Construction Start is not achieved on or before the applicable Construction Start Deadline, then for each day beginning with the day after the applicable Construction Start Deadline through and including the date on which Construction Start occurs for the required Projects, for a period beyond the applicable [REDACTED] (“**Construction Delay Cure Period**”), Seller shall pay Construction Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any Construction Delay Damages. Seller agrees that Buyer may draw any Construction Delay Damages that are due to Buyer from the Development Security after providing an

invoice for the amounts due. Prior to the expiration of the Construction Delay Cure Period, so long as Seller has paid Construction Delay Damages to Buyer in accordance with this Section 3.1(c), Seller's failure to achieve Construction Start on or before the applicable Construction Start Deadline shall not be deemed a Seller's Event of Default. If Seller achieves the Initial Delivery Date on the applicable Expected Initial Delivery Date, any Construction Delay Damages paid by Seller for the applicable Construction Start Deadline shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after the applicable Initial Delivery Date.

3.2 **Interconnection.** Seller shall (a) cause the execution all necessary Interconnection Agreements for the Projects in the Portfolio, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of the Product, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service including any Governmental Approvals required for the foregoing. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those Requirements set forth in the Utility Distribution Company's applicable tariffs, the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and Requirements, so as to be able to deliver the Product to Buyer.

3.3 **Metering.** At Seller's expense, Seller shall obtain and maintain one or more CAISO resource IDs dedicated exclusively to the Portfolio and shall install, or cause to be installed, all necessary metering and telemetry required by the CAISO to deliver the Product. CAISO-required meters shall be owned, maintained and operated by Seller at Seller's sole cost and expense. In addition, Seller shall install, and shall maintain throughout the Delivery Term a revenue grade meter capable of measuring and demonstrating on a monthly basis the sufficiency of the Delivered Quantities of Energy and the Delivered Quantities of Load Modifying Capacity.

3.4 **Progress Reports.** Within fifteen (15) days after the close of every other calendar month, starting with the first calendar month following the Execution Date and until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report in a Notice and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonable requested documentation, subject to the confidentiality restrictions set forth in this Agreement, directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

3.5 **[March 2022 and March 2023] Elections.**

(a) No later than [March 1, 2022],

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Load Modification and/or Energy Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Load Modification and/or Energy Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment Load Modification and/or Energy Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Load Modification and/or Energy Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Load Modification and/or Energy Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5). Buyer at its option may elect to change the accounting for the Load Modification Contract Amount from a kW-Month capacity construct to a kWh energy construct so long as no changes to the Seller's compensation and revenue hereunder results from such change.

(b) No later than [March 1, 2023],

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Load Modification and/or Energy Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Load Modification and/or Energy Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment Load Modification and/or Energy Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Load Modification and/or Energy Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise

(iii) Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Load Modification and/or Energy Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5).

3.6 **Remedial Action Plans.** If Seller anticipates that it will not be able to timely satisfy any Milestone set forth on the Cover Sheet, except as the result of Force Majeure or a Buyer Event of Default, Seller shall submit to Buyer no later than thirty (30) days prior to the relevant deadline a remedial action plan (“**Remedial Action Plan**”), which will describe in detail the actual delay, any anticipated delay beyond the scheduled deadline, the cause of the delay, and Seller’s proposed course of action to achieve the missed deadline, any subsequent Milestones, and the Initial Delivery Date by the Expected Initial Delivery Date. Delivery of a Remedial Action Plan shall not relieve Seller of any obligation under this Agreement.

ARTICLE 4: INITIAL DELIVERY DATES

4.1 **Timing of the Initial Delivery Dates.**

(a) **Initial Delivery Dates.** Seller shall cause the Initial Delivery Date to occur on, and not prior to, the applicable Expected Initial Delivery Date.

(b) **Failure to Meet Expected Initial Delivery Date.**

(i) Seller shall provide Buyer with advance Notice of any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, including a true and reasonably detailed explanation of the cause of such delay (“**Delay Notice**”), at least ninety (90) days in advance of the Expected Initial Delivery Date. For each day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, for a period beyond the Expected Initial Delivery Date lasting [REDACTED] (“**IDD Cure Period**”), Seller shall pay IDD Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any IDD Delay Damages. Buyer may draw any IDD Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due.

(ii) Prior to the expiration of the IDD Cure Period, so long as Seller has provided the Delay Notice to Buyer and paid IDD Delay Damages to Buyer in accordance with this Section 4.1(b), Seller’s failure to achieve the Initial Delivery Date on the Expected Initial Delivery Date shall not be deemed a Seller’s Event of Default and Seller shall not be required to pay any Shortfall LDs. Upon (A) Seller’s failure to provide a Delay Notice to Buyer in accordance with this Section 4.1(b), (B) Seller’s failure to pay IDD Delay Damages in accordance with this Section 4.1(b), or (C) Seller’s failure to achieve the Initial Delivery Date prior to the expiration of the IDD Cure Period, in each case for any reason

other than a Force Majeure extension or a Buyer Event of Default, Seller will be deemed a Defaulting Party pursuant to Section 7.1(a)(v).

(c) Partial Initial Delivery.

(i) Notwithstanding the provisions of Section 4.1(b), if Seller has otherwise met all Conditions Precedent by the Initial Delivery Date except for the Minimum Commitment Contract Amount, Seller may proceed with a Partial Initial Delivery Date and provide a Partial LMR Dispatch Plan for each month until the Minimum Commitment Contract Amount is satisfied or until one hundred eighty (180) days ("**PIDD Cure Period**") has expired. Prior to the expiration of the PIDD Cure Period, so long as Seller is in compliance with the Partial LMR Dispatch Plan and is paying to Buyer the IDD Delay Damages, Seller's failure to achieve the Minimum Commitment Contract Amount shall not be deemed a Seller Event of Default. For the avoidance of doubt, Seller shall not incur Shortfall LDs until Seller has satisfied the Minimum Commitment Load Modification and/or Energy Amount and the PIDD Cure Period has ended.

(ii) During the PIDD Cure Period, Seller shall deliver Product in amounts no less than [REDACTED] of the Minimum Commitment Contract Amount to be delivered on the Initial Delivery Date ("**Partial Initial Delivery Amount**").

4.2 Conditions Precedent to the Initial Delivery Date. The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the "**Conditions Precedent**") and must be satisfied by Seller, to Buyer's reasonable satisfaction, at least seventy-five (75) days before the Initial Delivery Date, unless a different deadline is expressly set forth below, in which case such other deadline shall govern:

(a) Thirty (30) days before IDD the Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Portfolio and to enable Seller to deliver the Product to Buyer at the Product Contract Amounts.

(b) [Reserved.]

(c) Thirty days (30) before IDD the Seller shall have constructed or caused to be constructed the Projects that are to be part of the Portfolio as of the Initial Delivery Date in accordance with this Agreement to enable Seller to satisfy the obligations of the Seller herein, including the provision of the Product in the Product Contract Amounts from the Portfolio.

(d) Thirty days (30) before IDD the Seller shall have provided to Buyer a certification of Seller, substantially in the form attached hereto as Appendix IV, demonstrating (i) satisfactory installation, completion and commissioning of the Project(s) at the Site(s) that are comprising the Portfolio as set forth in Seller's Initial Portfolio List and (ii) that the Project(s) comprising the Portfolio as set forth in Seller's Initial Portfolio List, can deliver, in aggregate, the Product in the Product Contract Amounts.

(e) Thirty days (30) before IDD the Seller shall have executed and complied with any necessary Interconnection Agreement(s) and installed any necessary metering to deliver Product to Buyer in the Product Contract Amounts, in each case in accordance with the CAISO Tariff and any applicable tariffs of the Utility Distribution Company and the Participating Transmission Owner.

(f) Seller shall have submitted to Buyer a Project Safety Plan.

(g) Seller shall have provided Buyer with (A) Seller's Portfolio List in accordance with Section 5.4(d) that demonstrates Projects and Customers under executed Customer Agreements with

Seller sufficient for Seller to deliver, in aggregate, Product in the Product Contract Amounts (“**Seller’s Initial Portfolio List**”), and (B) a description of the Portfolio and Projects set forth in **Appendix I**. If Seller provides to Buyer Seller’s Initial Portfolio List, but prior to the occurrence of the Initial Delivery Date Seller changes Seller’s Initial Portfolio List, then this Condition Precedent shall not be satisfied and the date on which Seller provides to Buyer a changed Seller’s Portfolio List in accordance with this Agreement shall constitute provision of Seller’s Initial Portfolio List for purposes of this Condition Precedent.

(h) Seller shall have provided to Buyer an attestation, in the form attached hereto as **Appendix VII**, that Seller is following all of the rules set forth in CPUC Decision 18-01-003 regarding multiple-use application issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities (the “**MUA Decision**”).

(i) Thirty days (30) before IDD Seller shall have delivered to Buyer all insurance documents required under **Article 16**.

(j) By the occurrence of the IDD Seller shall have provided Delivery Term Security to Buyer as required by **Section 10.2**.

(k) By the occurrence of the IDD Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

(l) No Event of Default on the part of Seller shall have occurred and be continuing and no Remediation Event shall have occurred and remain unresolved.

(m) Seller shall have satisfied the following conditions specific to Load Modifying Resources:

(i) No later than the Load Modification Dispatch Plan Deadline, Seller shall have delivered to Buyer a Load Modifying Resource Dispatch Plan for the first year of the Delivery Term.

4.3 **Cooperation in Connection with Initial Delivery Date**. The Parties agree that, in order for Seller to achieve the Initial Delivery Date, the Parties may have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date. The Parties shall cooperate with each other on marketing activities as outlined in the Go to Market Plan to assist the Seller in obtaining Customers. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Product Contract Amounts beginning on the applicable Initial Delivery Date.

4.4 **Confirmation of Initial Delivery Dates**. Once each of the Conditions Precedent has been satisfied by Seller (other than any Condition Precedent that may only be satisfied as of the Initial Delivery Date), Seller shall certify such satisfaction to Buyer in a Notice confirming the anticipated occurrence of the applicable Initial Delivery Date. Buyer shall Notify Seller of any disagreement that Seller has satisfied such Conditions Precedent (with reasonable detail in regard to each Condition Precedent) within fifteen (15) Business Days of Seller’s Notice. No later than seven (7) Business Days following the applicable Initial Delivery Date, Buyer shall provide a Notice to Seller confirming the occurrence of the applicable Initial Delivery Date.

ARTICLE 5: TRANSACTION

5.1 **Product**.

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver exclusively to Buyer, all Energy and Load Modification, which in the case of the latter may be calculated or derived from the Operational Characteristics, which must be exclusively from the Portfolio (collectively, the “**Product**”), pursuant to the terms and conditions contained herein. Operational Characteristics shall not be modified during the Term.

(b) Buyer shall have the right to re-sell all or a portion of the Product purchased under this Agreement (“**Resold Product**”).

(c) Seller shall not be considered to be in default in the performance of its obligations to the extent that Seller’s failure to deliver to Buyer the Delivered Quantities of Load Modifying Capacity equal to the Committed Load Modifying Capacity is due to a Qualifying Grid Outage so long as Seller provides timely Notice to Buyer of such Qualifying Grid Outage, describing (i) which Customers in the Portfolio are affected by the Qualifying Grid Outage, (ii) the amount of reduction of the Committed Load Modifying Capacity for the duration of the Qualifying Grid Outage, and (iii) documentation of the Qualifying Grid Outage affecting said Customers. Failure to provide timely Notice constitutes a waiver of a claim of Qualifying Grid Outage.

(d) In addition to Qualifying Grid Outages, on any day when (i) an Emergency Alert 2 or Emergency Alert 3 are issued by CAISO, or (ii) the statewide Emergency Load Reduction Program is activated (an “**Additional Reserve Day**”), Seller may request reductions to the LM Contract Amounts if Seller deems that additional battery capacity must be held in reserve for one or more Customers on such Additional Reserve Day. Seller’s request must indicate why the normal reserve level for the battery is insufficient for anticipated Customer need on the Additional Reserve Day. Acceptance of Seller’s request shall be at Buyer’s discretion and will be considered only if Seller has reflected in its Customer Agreements that Seller establishes a reserve level for the battery in the Customer’s Project (■■■■ of total battery capacity at a minimum), reasonably based on assumptions around the power needed by Customer during an unexpected outage.

5.2 **Purchase and Sale Obligation.**

(a) **Initial Product.** During the Delivery Term, Seller shall deliver to Buyer all Product, including in the Product Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Section 5.2(b) and Section 5.2(c).

(b) **Energy Payment.**

(i) Each monthly invoice prepared by Seller pursuant to Article 9 shall include meter data substantiating the quantity of Energy, in kWh, delivered to Buyer from the Portfolio in connection with providing the Load Modification for the applicable month (the “**Delivered Quantities of Energy**”). In the event of an Energy Shortfall, Seller shall be subject to Energy Shortfall LDs.

(ii) For all Energy that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 9, pay Seller an Energy monthly payment (“**Energy Monthly Payment**” or “**EMP**”) as follows:

$$\text{EMP} = \text{DQE} \times \text{ECP}$$

where,

DQE = The Delivered Quantities of Energy; and

ECP = the Energy Contract Price.

(c) Load Modification Payment.

(i) Pursuant to Section 6.5 of this Agreement, Seller will provide Buyer a Load Modifying Resource Dispatch Plan each year, that includes Seller's commitment to the monthly Load Modification capacity and energy of the following year (the "**Committed Load Modifying Capacity**" and the "Committed Load Modifying Energy").

(ii) Each monthly invoice prepared by Seller pursuant to Article 9 shall include meter data substantiating the quantity of actual Load Modification, in kW-months, delivered to Buyer from the Portfolio consistent with the Load Modifying Resource Dispatch Plan for the applicable month (the "**Delivered Quantities of Load Modifying Capacity**"). In the event that Delivered Quantities of Load Modifying Capacity are less than the Committed Load Modifying Capacity, Seller will be subject to LM Shortfall LDs.

(iii) For all monthly Load Modification amounts provided in the Load Modifying Resource Dispatch Plan, Buyer shall, in accordance with Article 9, pay Seller a Load Modifying Resource monthly payment ("**Load Modifying Resource Monthly Payment**" or "**LMMP**") as follows:

LMMP = CLMC x LMCP where,

CLMC = the Committed Load Modifying Capacity; and

LMCP = the Load Modification Contract Price.

(A) For clarity, Buyer has no obligation to pay Seller for Load Modification that is delivered outside the parameters of the applicable Load Modifying Resource Dispatch Plan.

5.3 Allocation of CAISO Payments and Costs.

(a) Except as may otherwise be provided in this Agreement, 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 Product or Portfolio.

(b) To the extent that the Portfolio is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments of the CAISO Tariff, 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.

5.4 Customers.

(a) Seller Obligation to Obtain Customers. Seller shall obtain or cause to be obtained the Customers necessary to enable the safe and reliable delivery of Product in the Product Contract Amounts to Buyer during the Delivery Term. Seller shall enter into a Customer Agreement with each such Customer, complete all necessary registration forms regarding such Customers, submit any necessary documentation regarding such Customers and comply with all other Requirements of the Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority. In connection with but without limiting the foregoing, Seller shall at all times comply with the Go to Market Plan.

(b) **Customers Eligible for Inclusion in Portfolio.** Product provided to Buyer must come exclusively from Projects installed at Sites listed in Seller's Portfolio List in accordance with Section 5.4(d). Customers must meet the definition of a "Customer" during and throughout the Delivery Term in order to be included in Seller's Portfolio List.

(c) **Seller's Portfolio.** Seller shall cause Seller's Portfolio at all times during the Delivery Term to deliver at least twenty percent (20%) of the Product Contract Amount from assets associated with single-family residential Customer accounts. Additionally, in Buyer's sole discretion, Buyer may assist Seller to ensure that as much of the Seller's Portfolio as possible comes from assets associated with DAC, Low Income Customer, CARE/FERA or Medical Baseline Program multi-family residential Customer accounts.

(d) **Seller's Portfolio List.** As of the date first submitted in accordance with Section 4.2 and throughout the Delivery Term, Seller shall maintain a list of Customers in Seller's Portfolio in the form and containing the information set forth in the Seller's Portfolio List in Appendix III ("Progress Reporting Form"). If any of the material Customer Information in Seller's Portfolio List materially changes during the Delivery Term, such change shall be deemed a Portfolio Modification pursuant with Section 5.4(e) and upon completion of such Portfolio Modification, Seller shall submit to Buyer an updated Seller's Portfolio List reflecting all changes since the previous Seller's Portfolio List. In addition, Seller shall provide any additional Customer Information reasonably requested by Buyer in connection with this Agreement.

(e) **Portfolio Modification.** The Parties agree and acknowledge that Seller may add or remove a Customer from Seller's Portfolio (a "**Portfolio Modification**") at any time during the Delivery Term, subject to the requirements of this Section 5.4 and Article 11, and provided that Seller shall Notify Buyer of any proposed Portfolio Modification within thirty (30) days of its occurrence. A Portfolio Modification may not alter (i) the Portfolio from the Portfolio description set forth in Appendix I as of the Execution Date, (ii) the Operational Characteristics, or (iii) the Portfolio's ability to deliver Product in the Product Contract Amounts throughout the Delivery Term. Within sixty (60) days of a Portfolio Modification, Seller shall provide Buyer a signed Portfolio Modification certification in the form set forth in Appendix IX. A Portfolio Modification will not alter nor relieve any of Seller's obligations under this Agreement.

(f) **Dual Participation.** Seller may include in Seller's Portfolio those Customers that are registered in programs or resources administered by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority ("**Other Programs**"), provided that (i) participation of Customers in both Seller's Portfolio and Other Programs does not impair (in whole or in part) Seller's ability to perform its obligations under this Agreement (including Section 14.4), (ii) Seller complies with all rules and Requirements of Other Programs set forth by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority, and (iii) Seller provides Buyer with an annual report listing all Customers and Other Programs in which they are enrolled, if applicable. For the avoidance of doubt, a failure by Seller or a Customer to achieve participation in Other Programs shall not in any way limit or excuse Seller's obligations to Buyer under this Agreement.

(g) **Seller's Relationship with Customer.** The terms and conditions of the Customer Agreements governing the relationship between Seller and a Customer with respect to such Customer's participation in Seller's Portfolio are independent of Buyer, and Buyer shall have no responsibility with respect to such Customers for purposes of Seller's Portfolio. Seller shall independently resolve any disputes arising between Seller and any Customer.

ARTICLE 6: OPERATIONS

6.1 **Operations.** Seller shall at all times retain operational control of the Portfolio and be responsible for operation and maintenance of the Portfolio, and Buyer shall have no liability for the failure of Seller, any Customer, or any Project owner or operator to comply with any applicable Law, Requirements, or other Requirement of the Transmission Provider or Utility Distribution Company, including any penalties, charges or fines imposed for such noncompliance.

(a) **Islanding:** Projects have the capability to provide back-up power to Customers in the event of a power outage on the distribution system.

6.2 **Charging Energy.** As between Buyer and Seller, Buyer shall not be responsible for procuring and delivering Charging Energy to the Portfolio or paying costs associated with Charging Energy.

6.3 **Standard of Care.** In performing all of its obligations under this Agreement, including in its scheduling, interconnection, operation, and maintenance of the Portfolio, Seller shall comply with all Requirements and Safety Requirements.

6.4 **Buyer's Use and Certification of Product.**

(a) During the Term, Seller shall take all actions, including executing all documents or instruments, complying with all applicable registration, certification and reporting Requirements of all applicable Governmental Authorities and other Persons, as such Requirements may be amended from time to time, that are necessary to ensure that Buyer can use Product or sell Resold Product, at all times during the Delivery Term. Promptly following Buyer's written request, Seller agrees to take all actions and execute or provide any documents, information, or instruments with respect to Product reasonably necessary to enable Buyer to comply with the Requirements of any Governmental Authority.

(b) During the Delivery Term, Seller shall, at no cost to Buyer, obtain and maintain CAISO and all applicable Governmental Authority certification(s) for all elements of the Product for which certification is or may become required in order to enable Buyer to receive and use such Product. If Buyer is required under applicable Law to obtain such certification, Seller shall take all actions within its control to ensure that Buyer is able to secure such certification. Seller, at no cost to Buyer, shall take all other actions during the Delivery Term, including submission of all reports and other filings with CAISO and applicable Governmental Authorities, that are required to be taken by Seller to ensure that Buyer can receive the Product and shall take all actions within its control to assist Buyer in taking actions required to be taken by Buyer with regard to receipt of Product.

6.5 **Load Modification Dispatch.** The provisions of this Section 6.5 shall apply as follows:

(a) For each year of the Delivery Term, Seller shall submit to Buyer a Load Modifying Resource Dispatch Plan on or before the Load Modification Dispatch Plan Deadline.

(b) No less than 15 days before the Load Modification Dispatch Plan Deadline, the Parties shall meet to discuss the Load Modifying Resource Dispatch Plan for the coming year.

(c) Buyer may require Seller to modify the Load Modifying Resource Dispatch Plan to maximize Load Modification for Buyer outside of Customers' TOU periods upon mutual agreement of an equitable adjustment to the Load Modification Contract Price to reflect the demonstrable economic loss to Seller or Seller's Customers.

(d) At all times during the Delivery Term, Seller shall operate the Portfolio to provide the Load Modification Contract Amounts as specified in the applicable Load Modifying Resource Dispatch Plan.

6.6 **Information Sharing and Shared Learning.** Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer's portfolio of assets to meet its customers' needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data at least on an aggregated basis but excluding cost or similar proprietary information, upon Buyer's request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. Except with respect to services, attributes, or products delivered to Customers pursuant to Customer Agreements or products or services related to renewable energy credits (which shall not require any Notice to Buyer), for information related to Seller's multiple uses of the Portfolio, Seller shall promptly provide Notice to Buyer any time it provides any services, attributes, or products from the Portfolio to a third party.

6.7 **Changes in Law.**

(a) **Downward and Upward Change Notices.**

(i) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in a decrease to the amount of Product that may be calculated or derived from the Operational Characteristics (including any extension by the CEC, CPUC or CAISO of the required duration of energy storage resources for Load Modification), Seller shall exercise commercially reasonable efforts to maintain the Product Contract Amounts. If despite such efforts Seller is unable to maintain the Product Contract Amounts as a result of such change in Requirements, then either Party may provide Notice to the other Party, once it is reasonably evident that the Product Contract Amounts cannot be maintained, specifying the altered amounts of Product ("**Downward Change Notice**"). Following a Downward Change Notice, Buyer will confirm via Notice to Seller the amended Product Contract Amounts based on such change and the date that Seller shall commence delivery of such amended amounts ("**Downward Change Confirmation Notice**").

(ii) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in an increase to the amount of Product that may be calculated or derived from the Operational Characteristics (including in the case of a new category of Load Modification), then either Party shall provide Notice to the other Party as soon as practicable following knowledge of such change specifying the altered amounts of Product ("**Upward Change Notice**"). Following any Upward Change Notice, Buyer shall have sole discretion over whether to accept a corresponding increase to any Product Contract Amount. If the Seller increases its Load Modification delivery up to [REDACTED]

[REDACTED]. If Buyer chooses to accept such increase, Buyer will confirm via Notice to Seller the amended Product Contract Amounts based on such change and the date that Seller shall commence delivery of such amended amounts ("**Upward Change Confirmation Notice**"). If Buyer declines to accept any such increase, Seller shall have the right to sell to third parties any resulting Product that is in excess of the Product Contract Amounts.

(iii) The Product Contract Amounts shall automatically adjust upon the date set forth in the Confirmation Notice without further need for the Parties to amend this Agreement. Until such date, Seller shall continue to deliver the Product Contract Amounts as stated prior to the Confirmation Notice, unless otherwise required by Law or other Requirements.

(b) If a change in Requirements by the CAISO, CEC, or CPUC renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 19.2. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

(c) Without limitation or modification of Section 6.7(a) or Section 6.7(c), in the event of any change in Requirements by the CPUC, CEC, CAISO, or other Governmental Authority or Person that significantly modifies the market mechanisms or regulatory construct for delivery of Product, either Party may provide Notice to the other Party requesting that the Parties discuss in good faith changes to this Agreement that would enable each Party to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith for a period of at least sixty (60) days but shall have no further obligation or rights under this Section 6.7(c).

ARTICLE 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Seller’s Event of Default”):

(i) Seller fails to satisfy a Performance Assurance requirement set forth in Article 10 and Seller fails to provide replacement Performance Assurance within ten (10) Business Days of Buyer’s written demand therefor in accordance with Article 10;

(ii) any material misrepresentation or omission, in any metering or submetering, Load Modifying Resource Dispatch Plan, Supply Plan, Seller’s Portfolio List, report, or Notice with regard to delivery of the Product, or undue delay or withholding of such data, report or Notice, which misrepresentation or undue delay or withholding is not cured within ten (10) Business Days of Buyer’s receipt thereof;

(iii) Seller intentionally or knowingly delivers, or attempts to deliver Product that is not produced by the Portfolio;

(iv) Seller fails to achieve Construction Start by the applicable Construction Start Deadline for reasons other than Force Majeure, subject to Section 3.1(c);

(v) Seller fails (A) to deliver a Delay Notice in accordance with Section 4.1(b)(i) or (B) to achieve an Initial Delivery Date by the applicable Expected Initial Delivery Date for reasons other than Force Majeure, subject to Section 4.1(c);

(vi) Seller fails to achieve the Minimum Commitment Contract Amount by the end of the IDD Cure Period, subject to Section 4.1(b);

(vii) Seller fails to achieve the Minimum Commitment Contract Amount by the end of the PIDD Cure Period, subject to Section 4.1(c);

(viii) Seller fails in any month to deliver Delivered Quantities of Load Modifying Capacity to Buyer equal to the Load Modification Contract Amount, unless such failure is excused pursuant to Section 5.1(c) or Buyer has received Shortfall LDs in lieu of Delivered Quantities of Load Modifying Capacity; provided that Shortfall LDs may not be used to avoid a Seller's Event of Default (A) during the months of August and September or (B) more than three (3) times in any twelve (12) month period during the Delivery Term;

(ix) In any year in the Delivery Term, aggregate Delivered Quantities of Load Modifying Capacity are [REDACTED] of the Load Modification Contract Amounts for such period.

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a "**Party's Event of Default**"): "

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party under this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement, including any failure by Seller to comply with all Requirements and Safety Requirements in accordance with Section 6.3, except to the extent constituting a separate Event of Default, and such failure is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 18; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

7.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party has occurred, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, in the case of an Event of Default by Seller occurring before the Initial Delivery Date, including an Event of Default under Section 7.1(a)(v), or (ii) the Termination Payment calculated in accordance with Section 7.3 below, in the case of any other Event of Default by either Party;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except where an express and exclusive remedy or measure of damages is provided under this Agreement;

(f) provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

7.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party, as of the Early Termination Date, netted into a single amount; *provided*, that if the Termination Payment amount would be a negative number based upon the foregoing clause, the Termination Payment shall be deemed to be zero dollars (\$0.00). The Non-Defaulting Party shall calculate a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

7.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the

calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

7.5 **Disputes with Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 19.

7.6 **Rights and Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 7 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 8: FORCE MAJEURE

8.1 **Force Majeure.**

(a) **Effect of Force Majeure.** A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party's failure or delay of performance. The burden of proof for establishing the existence and consequences of an event of Force Majeure lies with the Party initiating the claim.

(b) **Notice of Force Majeure.** The Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide prompt Notice to the other Party in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) days after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure.

(c) **Mitigation of Force Majeure.** The suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Expected Initial Delivery Date as a result of a Force Majeure event declared by Seller in accordance with this Agreement, then Seller shall work diligently to resolve the effect of the Force Majeure and provide evidence of its efforts promptly upon Buyer's written request.

(d) **Force Majeure Failure.** Subject to Section 8.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a "**Force Majeure Failure**":

- (i) if during the Delivery Term:

(A) due to a Force Majeure event, Seller is unable to meet its obligations under this Agreement (including any failure to deliver to Buyer Delivered Quantities of Load Modifying Capacity equal to the Load Modification Contract Amounts) for a period greater than one hundred eighty (180) days;

(B) the Portfolio is destroyed or rendered inoperable by an event of Force Majeure; or

(C) if Seller is unable, due solely to a Force Majeure event, to achieve an Initial Delivery Date by one hundred eighty (180) days after the applicable Expected Initial Delivery Date.

(e) **Effect of Termination for Force Majeure Failure.** If Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(d), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 21.3.

ARTICLE 9: INVOICING AND PAYMENT

9.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice, in arrears, to Buyer no sooner than ten (10) Business Days after the end of each month of the Delivery Term for all amounts due from Buyer to Seller under this Agreement, including, as applicable: (a) the Monthly Payment, and (b) other compensatory adjustments required by this Agreement, including adjustments for Taxes. Each invoice shall (i) contain data sufficient to document and verify all amounts included therein, including any relevant records, invoices, or settlement data from CAISO, necessary to verify the accuracy of any amount and (ii) be in a format specified by Buyer.

9.2 **Payment.** Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within forty-five (45) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the three-month LIBOR, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.4 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by CAISO. If the required adjustment is in favor of Buyer, Buyer's next Monthly Payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.2, accruing from the date on which the adjusted amount should have been due.

9.4 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date of the invoice, or adjustment to an invoice, was

rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. 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 five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 9.3. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.4 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

9.5 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

ARTICLE 10: PERFORMANCE ASSURANCE

10.1 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) Business Days of the Execution Date. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Upon the earlier of (a) Seller's delivery of the Delivery Term Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Initial Delivery Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

10.2 **Seller's Delivery Term Security**. To secure its obligations under this Agreement, Seller shall deliver Delivery Term Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Delivery Term Security in full force and effect, and shall within five (5) Business Days after any draws made by Buyer in accordance with this Agreement (other than to satisfy a Termination Payment) replenish the Delivery Term Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Delivery Term Security. If the Delivery Term Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall

have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Delivery Term Security.

10.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Delivery Term Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 10.1 and 10.2 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of a Seller’s Event of Default or a Party’s Event of Default on the part of Seller, an Early Termination Date resulting from a Seller’s Event of Default or a Party’s Event of Default on the part of Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Delivery Term Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 10.3):

(i) Exercise any of its rights and remedies with respect to the Development Security and Delivery Term Security, including any such rights and remedies under Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Delivery Term Security; and

(iii) Liquidate all Development Security or Delivery Term Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

(b) Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

10.4 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller’s annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. Notwithstanding anything else herein to the contrary, to the extent Seller is a publicly traded corporation on a nationally recognized stock exchange, the obligation to deliver financial statements pursuant to Section 10.4 herein shall be waived.

ARTICLE 11: SAFETY

11.1 Safety.

(a) Seller shall, and shall cause its Affiliates and Contractors to, design, construct, operate, and maintain the Portfolio and conduct all Work or cause all Work to be conducted in accordance

with the Safety Requirements. Seller shall, and shall cause its Affiliates and Contractors to, take all actions to comply with the Safety Requirements.

(b) Prior to Seller's execution of a Contractor's contract, Seller shall demonstrate to Buyer that the Contractor has the qualifications, experience, and safety record to develop, construct, operate and maintain the Portfolio, as applicable. During the period that a Contractor is conducting Work, Seller shall cause the Contractor to meet and comply with the Safety Requirements.

(c) Seller shall document a Project Safety Plan and incorporate the Project Safety Plan's features into the design, development, construction, operation, and maintenance of the Portfolio. Seller shall submit for Buyer's review a Project Safety Plan, in a format acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements and (B) Seller's consideration of the Project Safety Plan items in Part Two (Portfolio Design and Description) of Appendix VI. Upon Notice to Buyer, Seller may deviate from any specific procedures identified in the Project Safety Plan while designing, developing, constructing, operating, or maintaining the Portfolio, if in Seller's judgment, the deviation is necessary to design, develop, construct, operate, or maintain the Portfolio safely or in accordance with the Safety Requirements.

(d) Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Project Safety Plan to Buyer within thirty (30) days of any such updates. Throughout the Delivery Term, Buyer shall have the right to request Seller to provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

(e) Seller shall remove any Contractor that engages in repeated, material violations of the Project Safety Plan or Safety Requirements, unless doing so would present an ongoing material adverse effect to the operation of the Portfolio.

11.2 Reporting Serious Incidents. Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the Contractor or Customer(s) involved in the incident (as applicable), the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance, and cause each of its Contractors and Customer(s) to cooperate and provide reasonable assistance, to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

11.3 Remediation.

(a) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) Business Days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer's review.

(b) Seller shall cooperate, and cause each of its Contractors to cooperate, with Buyer in order for Seller to provide any report relating to a Remediation Event, in a form and level of detail that is acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as requested by Buyer.

ARTICLE 12: TAXES

12.1 **Taxes.** Seller shall pay or cause to be paid all Taxes (a) on or with respect to the Portfolio and (b) on or with respect to the sale and making available of Product to Buyer that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Execution Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

12.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party.

ARTICLE 13: LIMITATIONS

13.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 15 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

13.2 **Waiver and Exclusion of Other Damages.**

(a) EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

(b) FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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.

(c) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.1(c), 4.1(b), 7.2 AND 7.3, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

(d) THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 14: REPRESENTATIONS; WARRANTIES; COVENANTS

14.1 **Seller's Representations and Warranties.** As of the Execution Date, Seller represents and warrants as follows:

(a) Seller is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller (evidence of such due authorization Seller shall provide to Buyer if requested) and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any Permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Portfolio is located in the State of California.

(f) Seller will be responsible for obtaining all Permits necessary to construct and operate the Portfolio and Seller will be the applicant on any California Environmental Quality Act documents.

(g) Seller is familiar with conflict of interest Laws, including the California Political Reform Act, and Buyer's board policies governing conflicts of interest; Seller is in compliance with such Laws and board policies and does not know of any facts that would violate such Laws and board policies; Seller and its officers and agents have not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value to any employee, director, officer of Buyer or governmental official in Alameda County, California for the purpose of influencing any act or decision of such employee, director, officer or government official in her official capacity; no officer or agent of Seller (i) is a government official in Alameda County, California or a family member of a government official in Alameda County, California or (ii) has a personal, business, or other relationship or association with any government official in Alameda County, California or family member thereof who may have responsibility for or oversight of any activities of Buyer; Seller does not employ any government official in Alameda County, California or family member thereof.

(h) Seller will be responsible for ensuring all Projects in the Portfolio maintain compliance with the dual participation requirements of Section 5.4(f).

14.2 **Buyer's Representations and Warranties.** As of the Execution Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

14.3 **General Covenants.** Each Party covenants that commencing on the Execution Date and continuing throughout the Term it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition.

14.4 **Covenants of Seller.** Seller covenants to and for the benefit of Buyer that throughout the Delivery Term (unless another time period is specified):

(a) Seller shall (i) acquire and maintain all Governmental Approvals necessary for the construction, operation, and maintenance of the Portfolio consistent with Safety Requirements, including any approvals required under the California Environmental Quality Act, (ii) Notify Buyer of any material modifications or lapse in renewal of Governmental Approvals, and (iii) at Buyer’s request, provide to Buyer digital copies of any Governmental Approvals.

(b) Seller shall deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

(c) Seller shall take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Portfolio in order to satisfy its Compliance Obligations.

(d) Seller shall operate the Portfolio during the Delivery Term in accordance with Appendices I and II and Safety Requirements.

(e) Seller shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff Requirements applicable to energy storage facilities.

(f) Seller shall follow all the rules set forth in Exhibit A of the MUA Decision.

14.5 **Prevailing Wage.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. In addition, Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Projects are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that

Seller's obligations under this Section 14.5 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Projects.

ARTICLE 15: INDEMNITIES

15.1 Indemnity by Seller.

(a) Seller shall defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, employees, and representatives ("**Buyer Group**") from and against all third party or Customer claims arising out of this Agreement, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, however described (collectively, "**Claims**"), which arise out of or relate to or are in any way connected with (i) Seller's delivery of the Product to Buyer, (ii) Seller's or its Affiliates' ownership, development, construction, operation or maintenance of the Portfolio, including the Project(s) and the Site(s); (iii) Seller's or its Affiliates' actions or inactions, including Seller's breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Portfolio, the Project(s), Seller's Portfolio, Customer(s), or Site (including any Claims relating to Shortfall LDs); (iv) any environmental matters associated with the Portfolio, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement; (v) any agreement between Seller or its Affiliates and a third party including any Customer Agreement; (vi) the participation of Customers in the Portfolio (or the solicitation thereof); or (vii) Seller's or its Affiliates' violation of any applicable Law, Requirements, or other requirements of Transmission Provider, Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller's Affiliates, Customers, or others, excepting only such losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group (collectively, "**Indemnifiable Losses**").

(b) Seller shall defend, indemnify and hold harmless the Buyer Group harmless from and against all Claims incurred by or brought against Buyer in connection with Environmental Costs.

15.2 Notice of Claim.

(a) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 15, Buyer will promptly Notify Seller in writing of any Claim which Buyer has determined has given or could give rise to an Indemnifiable Loss under Section 15.1. The Notice is referred to as a "**Notice of Claim.**" A Notice of Claim will specify, in reasonable detail, the facts known to Buyer regarding the Indemnifiable Loss.

(b) Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 15.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Seller is not obligated to indemnify Buyer for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.3 Defense of Claims. If, within ten (10) days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 15.2(b), Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim as provided in the last sentence of Section 15.2(b), Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof;

provided, however, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be liable for all costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder; provided, however, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Buyer up to the date of such Notice.

15.4 **Subrogation of Rights.** Upon making any indemnity payment, Seller will, to the extent of such indemnity payment, be subrogated to all rights of the Buyer against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) Seller is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until Buyer recovers full payment of its Indemnifiable Loss, any and all claims of the Seller against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Buyer's rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

15.5 **Rights and Remedies are Cumulative.** The rights and remedies of a Party pursuant to this Article 15 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement, except with respect to any expressly exclusive remedies herein.

ARTICLE 16: INSURANCE

16.1 **Insurance.** Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its Contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 16.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional named insured.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED].

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement."

(d) **Construction All-Risk Insurance.** During the construction of the Portfolio prior to the Initial Delivery Date, construction all-risk form property insurance covering the Portfolio and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured.

16.2 **Evidence of Insurance.** Within ten (10) days after the Execution Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, reduction, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

16.3 **Failure to Comply.** If Seller fails to comply with any of the provisions of this Article 16, Buyer may, but is not obligated, to purchase the insurance coverage required under Section 16.1 and set off the cost thereof from any amounts owed by Buyer to Seller under this Agreement.

ARTICLE 17: RECORDS AND AUDIT RIGHTS

17.1 **Operations Logs.** Seller shall maintain a complete and accurate log of all material operations. Such log will include, but not be limited to, information, to be measured on an hourly basis and relayed to SVCE on a monthly basis, on charging, discharging, availability, maintenance performed, outages, electrical characteristics of the energy storage systems and similar information relating to the availability, testing and operation of the Portfolio. Seller shall provide this information electronically to Buyer on a monthly basis. At the request of Buyer or any Governmental Authority having jurisdiction over any of the Requirements, Seller shall provide all records demonstrating that the Portfolio is operated and maintained in accordance with Requirements.

17.2 **Records and Audit.**

(a) Seller shall provide access to such financial records and personnel required by Buyer in order to facilitate Buyer's compliance with applicable Law and Generally Accepted Accounting Principles.

(b) To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Seller will make all records available to Buyer at its principal place of business during normal working hours.

17.3 **General Audit Right.** Buyer has the right during normal working hours, and after reasonable Notice, to examine Seller's records to the extent reasonably necessary to verify (a) Seller's compliance with this Agreement (including Section 14.4), (b) the accuracy of any statement including the Project Safety Plan or other documents that supplement this Agreement, and (c) any charge, or computation made pursuant to this Agreement. If such examination reveals any material inaccuracy, necessary adjustments shall be made promptly.

17.4 **State Auditor.** In accordance with Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement if the compensation under this Agreement exceeds [REDACTED].

17.5 **Data Request Cooperation.** Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities or Public Records Act requests that are related to or associated with the Portfolio, delivery of Product or this Agreement, subject to the requirements of Article 20.

17.6 **Access Rights.** With respect to multifamily Projects only, Seller agrees, and shall cause each multifamily Customer to agree, to allow Buyer, the Utility Distribution Company, the Commission, and/or the CEC, and the authorized representatives of such entities, reasonable access to Seller's and the Customers' facilities to conduct measurement and evaluation activities related to this Agreement.

ARTICLE 18: ASSIGNMENT

18.1 **General Prohibition on Assignments.** Except as provided below, neither Party may directly or indirectly assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Seller Change of Control or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld.

18.2 **Collateral Assignment.**

(a) Subject to the provisions of this Section 18.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Portfolio.

(b) In connection with any collateral assignment of this Agreement for purposes of the financing or refinancing of the Portfolio by Seller, Buyer agrees to work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender.

18.3 **Assignment to Seller Affiliate.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's conflict of interest code/policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller, provided that such assignment shall not release Seller from its obligations under this Agreement unless such Affiliate has financial strength and technical capabilities equal to or greater than that of Seller.

18.4 **Unauthorized Assignment; Costs.**

(a) Any assignment or purported assignment in violation of this Article 18 is void.

(b) No assignment of this Agreement shall be effective unless such assignment is memorialized in a written agreement signed by the assignee and, except in connection with a collateral financing, in which agreement the assignee assumes all of the assignor's obligations and liabilities under this Agreement.

(c) Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

ARTICLE 19: DISPUTE RESOLUTION

19.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States Northern District of California, or the courts of the State of California sitting in the County of Alameda, California.

19.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, 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 the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne

solely by such Party. If the mediation is unsuccessful, 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 Agreement. To the fullest extent permitted under applicable Law, any statute of limitations applicable to a dispute that is mediated by the Parties pursuant to this Agreement shall toll during any period in which such dispute is being mediated in accordance with this Section 19.2.

ARTICLE 20: CONFIDENTIAL INFORMATION

20.1 **Confidential Information**. Throughout the Term, neither Party shall disclose (a) the non-public terms or conditions of this Agreement, (b) information disclosed to such Party by the other Party that is (i) marked or expressly identified as “confidential” and (ii) accompanied by a statutory reference to the applicable section of the Public Records Act pursuant to which such information may be kept confidential or (c) Customer Information (collectively, “**Confidential Information**”) to a third party.

20.2 **Permitted Disclosures**. A Party may disclose Confidential Information: (a) to the Party’s Affiliates and the Party’s and its Affiliate’s employees, counsel, accountants, advisors, lenders, or equity investors who have a need to know such information and have agreed to keep such terms confidential; (b) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“**Disclosing Party**”), other than to those entities set forth in subsection (c); or (c) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC.

(a) **Procedure for Permitted Disclosures**. In connection with requests made pursuant to Section 20.2(b) (“**Disclosure Order**”) and disclosures pursuant to Section 20.2(c) (“**Regulatory Disclosure**”) each Party shall, to the extent practicable, use reasonable efforts to: (A) Notify the other Party prior to disclosing the Confidential Information and (B) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (I) prohibited from complying with a Disclosure Order or making the Regulatory Disclosure or (II) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information.

(b) **Disclosure Requests**. If a Party (“**Receiving Party**”) receives a request from a third party for access to, or inspection, disclosure or copying of, any of the other Party’s (the “**Supplying Party**”) Confidential Information (“**Disclosure Request**”), then the Receiving Party shall provide Notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such Notice, the Supplying Party may provide a Notice to the Receiving Party stating that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request and will seek a protective order or other judicial determination to protect the confidential information, in such case, the Supplying Party will cover all of its own costs and further agrees to indemnify and pay any and all costs incurred by Receiving Party as a result of the Supplying Party’s attempts to protect from disclosure the information. If the Supplying Party does not seek or does not receive a protective order or other judicial determination protecting the Confidential Information, the Receiving Party may disclose the Confidential Information, which disclosure will not be considered a violation of this Agreement. The Parties recognize that Buyer is a public entity subject to the provisions of the California Public Records Act, and that disclosures made thereunder shall not be considered a violation of this Agreement.

20.3 **Remedies**. Except as provided in Section 20.2 with respect to the Parties’ permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

20.4 **Customer Information.** Seller shall comply with all applicable Laws relating to the protection of Customer Information, including California Public Utilities Code Section 8380, *et seq.* and the “Rules Regarding Privacy and Security Protections for Energy Usage Data” adopted by the CPUC.

ARTICLE 21: GENERAL PROVISIONS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Cover Sheet and any exhibit, appendix, or other attachment hereto is an integral part hereof and is made a part of this Agreement by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

21.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

21.3 **Survival.** Applicable provisions of this Agreement shall continue in effect after termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. Notwithstanding anything to the contrary in this Agreement, (a) all rights under Sections 15.1 through 15.5 (Indemnities) and any other indemnity rights survive the end of the Term without limit, (b) all audit rights under Sections 17.2 and 17.3 survive the end of the Term for an additional one (1) year, or as required by applicable Law, (c) all rights and obligations under Article 20 (Confidentiality) survive the end of the Term without limit, and (d) all provisions relating to limitations of liability survive without limit.

21.4 **Waivers.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any waiver of a default under this Agreement must appear in a writing signed by the waiving Party.

21.5 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as Product seller and Product purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Portfolio, the Product or any business related to the Portfolio. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender or indemnitee. In no event shall Buyer’s receipt or review of any Seller submission, or Buyer’s monitoring of Portfolio data or cooperation in Portfolio operations be construed as an assumption of any responsibility, liability or obligation of Seller for the design, construction or operation of the Portfolio.

21.6 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.7 **Mobile Sierra.** Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or

conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Mkt’g, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).

21.8 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

21.9 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, provided that any digital signatures are in compliance with California Code of Regulations, Title 2, Division 7, Chapter 10, Sections 22000 – 22005.

21.10 **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.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

21.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

21.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

ARTICLE 22: NOTICES

22.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Appendix VIII or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

22.2 **Time of Delivery.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for

the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery, United States mail, or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

[_____]

Silicon Valley Clean ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX I³

DESCRIPTION OF PORTFOLIO

The following describes the Portfolio to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

A. PORTFOLIO DESCRIPTION

Portfolio name: Santa Clara County Resilient Capacity Resource

Energy storage technology of Projects: Li-ion

Interconnection:

CAISO transmission access charge area (e.g., PG&E): PG&E

B. PORTFOLIO SIZE

Nameplate capacity (aggregate): Minimum: ■ MW; Maximum: ■ MW

³ SVCE – WSGR NTD: Sunrun to confirm accuracy of this Appendix.

APPENDIX II

OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of Load Modifying Resource the Portfolio can provide.

Physical Location and Point of Interconnection

Shall be as set forth in Appendix I-A.

Discharging and Charging

Maximum continuous discharge power (Dmax): ____ MW

Minimum continuous discharge power (Dmin): ____ MW

Maximum discharge duration at constant Dmax : ____ (hours)

Maximum continuous charge power (Cmax): ____ MW

Minimum continuous charge power (Cmin): ____ MW

Maximum charge duration at constant Cmax: ____ (hours)

Amount of Energy released to fully discharge: ____ MWh

Amount of Energy required to fully charge: ____ MWh

Round-trip efficiency: _____ %

Ramp Rates

[Describe ramp rates. If ramp rates vary with loading level, please provide a ramp rate for each segment within the operational range in which it differs. If ramp rates vary based on the operating mode (e.g. regulation), please provide separately.]

Dmin to Dmax: ____ MW/second

Cmin to Cmax: ____ MW/second

Dmax to Dmin: ____ MW/second

Cmax to Cmin: ____ MW/second

System Response Time

[Timing should commence with system at a steady-state starting value and end when system has reached a steady-state ending value. Idle means that the system is neither charging nor

discharging, but is online and available for immediate operation. Time should include time from notification.]

Idle to Dmax: ____ seconds

Idle to Cmax: ____ seconds

Dmax to Cmax: ____ seconds

Cmax to Dmax: ____ seconds

Dmin to Cmin: ____ seconds

Cmin to Dmin: ____ seconds

[For the purpose of filling out this Appendix, Discharge (Charge) Start-up Time is the amount of time needed to go from non-operation to Dmin (Cmin). (The state of non-operation includes but is not limited to being unsynchronized to the grid.) Provide in seconds if appropriate.]

Discharge start-up time (from notification to Dmin): ____ seconds

Charge start-up time (from notification to Cmin): ____ seconds

Discharge Start-up Fuel: ____ MMBtu

Starts and other Run Time Limitations

[Describe start limitations. Include any daily or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s).]

Start limitations: _____

Run hour limitations: _____

[Describe minimum times.]

The minimum run time after a Discharge Start-up is ____ seconds

The minimum run time after a Charge Start-up is ____ seconds

The minimum down time after a shutdown is ____ seconds

APPENDIX III

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Portfolio description.
3. Indicative site plans representative of Projects to be included in Portfolio. Individual Project site plans for 10% or fewer of total Projects in Portfolio to be provided to Buyer at Buyer's discretion.
4. Description of any material planned changes to the Portfolio or the Site.
5. Schedule showing progress on Portfolio construction generally and achieving each of the Milestones and the Initial Delivery Dates.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones and the Initial Delivery Dates, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Dates.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Indicative pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress of a representative portion of Projects to be included in Portfolio. Pictures pertaining to 10% or fewer of individual Projects included in Portfolio to be provided to SVCE at SVCE's discretion.
12. Compliance with workforce and Prevailing Wage Requirements.
13. Any other documentation reasonably requested by Buyer.

SELLER'S PORTFOLIO LIST

as of [_____]

Customer Service Account Number	Customer name	Physical address of Site	Total Project capacity installed as part of the Portfolio	Project capacity installed to meet capacity associated with Operational Characteristics	Project capacity installed in excess of capacity associated with Operational Characteristics	Project manufacturer(s) and model number(s) installed at Site with corresponding Project capacity	Customer type (i.e., residential, commercial, municipal)	Project description (e.g., stand-alone storage, solar + storage, multi-family, disadvantaged community, etc.)	CAISO Resource ID	Sub-LAP

[By submitting this Seller's Portfolio List to Buyer, Seller attests as of the date signed below, that all of the information is accurate and that the Customers and Projects comprising Seller's Portfolio List are in compliance with the terms of the Agreement.]

Signature:	
Name:	_____
Title:	_____
Date:	_____

APPENDIX IV
CERTIFICATION
FOR COMMERCIAL OPERATION

This certification of commercial operation (“Certification”) is delivered by _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Amended and Restated Behind the Meter Energy Storage Agreement for Resilience dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller each hereby certifies and represents to Buyer the following:

- (1) The Portfolio has been completed and commissioned and it became commercially operable on J .
- (2) The Portfolio has been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio has been constructed in accordance with the Project Safety Plan.
- (4) The Portfolio is capable of producing and delivering Product in the Product Contract Amounts, and a performance test was conducted to confirm this capability.
- (5) Seller has designed and built the Portfolio to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (6) The design and construction of the Portfolio was carried out by the original equipment manufacturer or other qualified organization in accordance with the designs and requirements of the original equipment manufacturer.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX V

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXXXX]
Expiry Date:

Beneficiary:

Silicon Valley Clean Energy Authority, a California joint powers authority
333 W. El Camino Real, Suite 290
Sunnyvale, California 94087

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Amended and Restated Behind the Meter Energy Storage Agreement for Resilience dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on _____, 201_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds promptly and no later than the business day immediately following our receipt of a drawing certificate from Beneficiary in the form attached hereto as Exhibit A.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Amended and Restated Behind the Meter Energy Storage Agreement for Resilience dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because an event for which Beneficiary is entitled to make a drawing under this Letter of Credit pursuant to the Agreement has occurred.
3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority

Name and Title of Authorized Representative

Date_____

APPENDIX VI

PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

Identify the applicable safety-related codes, standards, and regulations (CSR) which govern the design, construction, operation, maintenance of the Portfolio using the proposed technology.

Describe the Seller's and the Seller's Contractor(s)' safety programs and policies. Describe Seller's compliance with any safety-related industry standards or any industry certifications (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), if applicable.

Part Two: Portfolio Design and Description

Describe Seller's safety engineering approach to select equipment and design systems and the Portfolio to reduce risks and mitigate the impacts of safety-related incidents, including cascading failures, excessive temperatures, thermal runaways, fires, explosions, disk fractures, hazardous chemical releases.

Describe the results of any failure mode effects analyses (FMEA) or similar safety engineering evaluations. In the case of lithium ion batteries, describe the safety-related reasons, including design features and historical safety records, for selecting particular anode and cathode materials and a particular manufacturer.

Provide a list of major facility components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

- a) Equipment manufacturer's datasheet, model numbers, etc.,
- b) Technical specifications,
- c) Equipment safety-related certifications (e.g. UL),
- d) Safety-related systems, and
- e) Approximate volumes and types of hazardous materials expected to be on Site.

Part Three: Project Safety Management

Identify and describe any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Portfolio. Describe the Seller's applicable site-specific safety plans, risk mitigation, Safeguards and layers of protection, including but not necessarily limited to:

- a) Engineering controls,
- b) Work practices,
- c) Administrative controls,
- d) Personal protective equipment and procedures,
- e) Incident response and recovery plans,
- f) Contractor pre-qualification and management,
- g) Operating procedures,
- h) Emergency plans,
- i) Training and qualification programs,
- j) Disposal, recycle, transportation and reuse procedures, and
- k) Physical security measures.

APPENDIX VII

MUA DECISION ATTESTATION

This attestation is delivered by _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Amended and Restated Behind the Meter Energy Storage Agreement for Resilience dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer, as of the date set forth below, that with regard to the Portfolio, Seller is following all the rules set forth in Exhibit A of CPUC Decision 18-01-003 regarding multiple-use application issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

EXECUTED by SELLER this _____ day of _____, 20__.

Signature: _____
Name: _____
Title: _____

APPENDIX VIII

NOTICES

SELLER	BUYER
All Notices: Street: City: Attn: Phone: Facsimile: Email:	All Notices: Street: 333 W. El Camino Real, Suite 290 City: Sunnyvale, California Zip: 94087 Attn: Girish Balachandran, CEO Phone: (408) 721-5301 Email: girish@svcleanenergy.org With a copy to: []
Invoices: Attn: Phone: E-mail:	Invoices: Attn: Power Supply Group Phone: (408) 721-5301 Email: SVCEpowersettlements@svcleanenergy.org
Scheduling: Attn: Phone: Email:	Scheduling: Attn: ZGlobal Phone: (916) 221-4327 Email: eric@zglobal.biz
Payments: Attn: Phone: E-mail:	Payments: Attn: Finance Group Phone: (408) 721-5301 Email: SVCEpowersettlements@svcleanenergy.org
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: [REDACTED] [REDACTED]
Emergency Contact: Attn: Phone: E-mail:	Emergency Contact: Phone: (408) 721-5301 x1009 Email: monica.padilla@svcleanenergy.org

APPENDIX IX

PORTFOLIO MODIFICATION CERTIFICATION

This certification of commercial operation for a Portfolio Modification (“Portfolio Modification Certification”) is delivered by each of _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Amended and Restated Behind the Meter Energy Storage Agreement for Resilience dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Portfolio Modification Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller each hereby certifies and represents to Buyer the following, severally and not jointly:

- (1) All parts of the Portfolio affected by the Portfolio Modification became commercially operational on [].
- (2) All parts of the Portfolio affected by the Portfolio Modification have been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio is capable of producing and delivering Product in the Product Contract Amounts, and a performance test was conducted to confirm this capability.
- (4) Seller has designed and built the parts of the Portfolio affected by the Portfolio Modification to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (5) The design and construction of the parts of the Portfolio affected by the Portfolio Modification was carried out by the original equipment manufacturer or other qualified organization.
- (6) The Portfolio as modified under the Portfolio Modification is able to operate in a manner consistent with the Safety Requirements.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX X

RESERVED

[_____]

APPENDIX XI

GO TO MARKET PLAN

SILICON VALLEY CLEAN ENERGY AND SUNRUN GO TO MARKET PLAN

1. Purpose of this GTM Plan

The intent of this GTM Plan is to clearly define the process that Sunrun and SVCE will follow in bringing this offering forward to SVCE customers. Minor adjustments to the GTM process are expected for the duration of the contract, but this GTM Plan reflects the initial understanding and outlines key milestones, requirements and assumptions on the part of Sunrun and SVCE. Substantive changes to the GTM process outlined in this GTM Plan will need to be made through an additional contract exhibit.

While Sunrun's customer portfolio commitments are enumerated in Section 5.4(c) of the Amended and Restated Behind the Meter Energy Storage Agreement for Resilience, Sunrun will work diligently with SVCE to attempt to deliver some amount of contract capacity from assets associated with multifamily customer accounts, subject to project eligibility, development timeline, and technology availabilities,.

2. Teams

SVCE will involve the following staff:

Name	Department	Responsibility
Aimee Bailey	Decarb & Grid Innovation	Program lead
Justin Zagunis	Decarb & Grid Innovation	GTM and EM&V support
Rebecca Fang	Decarb & Grid Innovation	Data analysis lead
Nik Zanolto	Administration	Data analysis support
Zoe Elizabeth	Account Services	Customer contact and marketing support
Pamela Leonard	Communications and Marketing	Marketing lead

Sunrun will involve the following staff:

Name	Department	Responsibility
Nick Smallwood	Business Development	SRUN Sponsor
Michael Norbeck	Business Development	Program lead
Scott Peattie	Business Development	Multifamily segment lead

Nora Hennings	Business Development	Co-marketing & program launch
Nate Henson	Growth Marketing	Go-to-Market planning and execution
Alex Sherman	Energy Services Program Management	Program management

Additional staff may be added with written notice to the other party.

3. Outreach Materials

SVCE will rely on Sunrun to prepare the majority of outreach materials. Some materials repurposed from other, similar projects will also be provided by Sunrun. Materials will include:

Tactic	Description	Lead Party	Sunrun Role	SVCE Role
SVCE webpage	Webpage hosted on SVCE's website explaining the program and pointing to Sunrun's lead capture landing webpage	SVCE	Provide sample content for SVCE to use	Implement and host webpage
Program Lead Capture Landing Webpage	Virtual location to host online materials and allow for customer to self-identify	Sunrun	Development; hosting	Review; provide brand guidelines
Direct Mail Invitations	Direct outreach to introduce customers to the program and solicit participation	Sunrun	Copy; images; targeting criteria	Review copy; review targeting and deployment plan
Social Media Posted / Paid Social Targeted	Social media posts to drive engagement with website	Sunrun	Design; copy; images	Review
Display Ads / YouTube Videos	Ad content to drive engagement with website	Sunrun	Design support; copy; images; videos	Review copy; post as mutually agreed-upon
FAQ	Posted to website, support for those interested	Sunrun	Content creation hosting	Review
Case Studies	Posted to website, marketing	Sunrun	Content creation hosting	Review

Multifamily Data Sharing Authorization Form	To allow Sunrun access to necessary data not included in Data Hive; may include aggregated multifamily site energy usage data, whether site has been impacted by PSPS events, and service level (depending on what data SVCE can make available while complying with relevant privacy policies); SVCE and Sunrun will mutually agree on data to be shared, format, and process	Sunrun	Provide draft and final; get signatures for qualified projects	Review; set up internal processes for handling requests; provide relevant data
End-User Contract	Final contract with the end user to confirm project and finalize sale	Sunrun	Provide draft and final	Review

Sunrun will provide all outreach materials for review and approval by appropriate SVCE staff prior to use and will make adjustments as requested by the SVCE staff. SVCE will provide direction on marketing messages that it wishes to incorporate into these materials to support its organizational positions (e.g. futureproofing, decarbonization/electrification).

SVCE does not plan to provide any co-marketing to this program outside of what is articulated herein. Sunrun shall inform SVCE of any marketing efforts (included in the table above, elsewhere in this document, or identified at a later time during program implementation) that Sunrun plans to undertake under this GTM Plan and will allow for SVCE review and approval, at SVCE's sole and absolute discretion, of the content and/or approach. For strategic marketing elements or other content that does not meet the definition of Co-Marketing Materials (such as a campaign approach proposed by Sunrun), SVCE and Sunrun will work to determine a mutually agreeable timeframe for SVCE review and approval.

Content used by Sunrun for marketing may guide interested customers to the program-specific SVCE or Sunrun webpages.

4. Customer Outreach Process - Single-Family

Most single-family customer recruitment will follow a multi-step process, which includes:

Step	Description	Lead Party	Sunrun Role	SVCE Role
Outreach	Targeted and web/social campaigns across multiple marketing mediums and target segments.	Sunrun	Campaign calendar, campaign setup, targeting & launch; co-branded collateral, messaging, targeting & media strategy	Review campaign calendar, campaign setup, targeting & launch; review messaging

Initial Conversation	Lead qualification for handraisers responding to outreach campaigns via web form or phone call	Sunrun	Lead capture form design & hosting.; Local call in number and inbound call center	Design input on lead form, guidance on desired customer experience
Meetings	Virtual sales consultation scheduled with qualified leads	Sunrun	Qualify lead and schedule appt., then conduct virtual appt	Guidance on script and desired experience
Proposals	Sunrun proposal for recommended product mix	Sunrun	Provide proposal from Sunrun Sales Platform (SPLAT)	Input on proposal contents and possible co-branding
Enrollment	Signed contract approval, schedule site audit, manage system design process	Sunrun	Manage enrollment through SFDC, provide feedback loop on contracts to SVCE CRM	Review enrollment progress and feedback loop; intake data from Sunrun

Sunrun will also continue to discuss with SVCE possible integration into SVCE's online Solar Assistant tool offered through pickmysolar. SVCE will provide support as needed if Sunrun, at its discretion, chooses to integrate with SVCE's online Solar Assistant tool. SVCE may separately provide Sunrun with the opportunity to present to a group of member cities' staff on the program and general offerings, as mutually agreed upon by Sunrun and SVCE.

To facilitate the identification of priority customers or customer segments (e.g., SGIP Equity Resiliency eligible customers), SVCE has shared some masked customer data with Sunrun. Sunrun may choose to identify a list of priority customers based on the data. At SVCE's discretion, SVCE may take the masked list of priority customers from Sunrun, internally identify these masked customers, and send targeted outreach to a subset thereof. Data sharing in support of outreach to potential priority customers will follow the process illustrated below:

Tactic	Description	Lead Party	Sunrun Role	SVCE Role
Masked Data Sharing	SVCE provided masked data through a separate non-disclosure agreement	SVCE	Established fields to be shared	Compiled and shared data

Masked Customer Analysis	Data is processed by Sunrun to identify favorable accounts	Sunrun	Lead analysis; create list of masked priority accounts	N/A
SVCE Outreach	Email outreach to targeted customers identified by Sunrun through the masked data	SVCE	Analyze data and provide list to target; create content	Optional activity, at SVCE's discretion. SVCE may leverage its channels (e.g., direct email marketing) to reach the priority accounts identified through Sunrun's masked data analysis. Sunrun will prepare content to support SVCE's outreach. SVCE refers interested respondents to SVCE program webpage. Maximum number of accounts targeted and channels utilized to be determined jointly by SVCE and Sunrun, with no guarantee of leads generated.

5. Customer Outreach Process - Multifamily

Sunrun's sales process for Multifamily relies on a smaller and more specialized in-house team. Sunrun will lead the process, with support from SVCE, as follows:

Step	Description	Lead Party	Sunrun Role	SVCE Role
Outreach	Predominantly direct inbound and outbound leads, many relationship-based, with some presence in multifamily-specific marketing (conferences, print advertising, social media)	Sunrun	Direct outreach, targeting & media strategy	Review any co-branded or program-related messaging

Initial Conversation	Lead qualification via teleconference meetings	Sunrun	Local call in number and inbound call center	Inform desired customer experience
Meetings	In-person (preferred, if possible) or virtual sales consultation scheduled with qualified leads	Sunrun	Qualify lead and schedule appointment	Inform desired customer experience; sit in at request of customer; SVCE will work with Sunrun to identify planned meetings that SVCE is interested in sitting in on (at least 5 opportunities)
Proposals	Sunrun proposal for recommended product mix	Sunrun	Access all available data through Data Hive; work with SVCE to scope additional data needed and establish data sharing process, including an authorization form; get authorization form signed as needed; usage analysis, initial engineering design, financial pro-forma, proposal creation	Upon receipt of signed authorization form, provide data as mutually agreed upon by SVCE and Sunrun – focus will be on necessary data not available through Data Hive, such as aggregated site-level 12 month meter data (15 min interval if possible), feedback on design
Enrollment	Signed contract approval, schedule site audit, manage system design process	Sunrun	Manage enrollment through SFDC, provide feedback loop on contracts to SVCE CRM	Review enrollment progress and feedback loop; intake data from Sunrun

6. Ongoing Customer Support

Given SVCE's role in helping acquire customers and market the program, SVCE wants to ensure that all participants have positive experiences throughout the lifetime of the projects. Sunrun shall provide excellent customer support throughout the customer acquisition process, as well as throughout the duration of the customer contract. Key elements of Sunrun's customer support shall include:

- Regional installation coordinator to ensure timely execution and prioritize issue resolution
- Project coordinator to manage site audit, design, installation, and permission to operate handoffs

- Customer care call center for inbound issue resolution
- Field service staffing to roll trucks to customer should an onsite issue resolution be needed
- Assigned Field Sales Consultant as primary contact for life of relationship with Sunrun

7. Flagship Elements

SVCE supports innovation that can provide better services and benefit its customers. While the contract with Sunrun is for energy and load modification, SVCE is interested in incorporating other “flagship” elements into the offerings for customers to consider. Flagship elements are strategies, approaches, or methods that are innovative, meet with SVCE’s mission, and otherwise provide co-benefits to the community. Flagship elements may include:

- Combining the construction of solar and/or storage onsite with one or more other electrical upgrades (e.g., electric vehicle charging or heat pump technologies)
- Sizing new equipment to account for future load impacts (e.g., panel upgrades to accommodate a future electric vehicle)
- Providing customer-beneficial technologies like energy management
- Supporting SVCE priorities in decarbonization and electrification

SVCE and Sunrun will continue to discuss flagship offerings for single-family accounts. One or more flagship offerings may be mutually agreed upon through these conversations. Depending on the flagship offering and target audiences, SVCE and Sunrun may choose to commit to additional incentives, marketing, or program support. Such offerings and corresponding activities would need to be addressed through a separate agreement.

As multifamily accounts are qualified, Sunrun will discuss with SVCE the commercially reasonable opportunities for flagship elements at each site and the potential of developing these projects, potentially to include flagship elements, within a reasonable time frame. Upon agreement between Sunrun and SVCE, Sunrun will approach the customers with the concept. Customers can then decide whether they are interested in pursuing available flagship elements at their site. If flagship elements may eliminate the ability to deliver the capacity within the delivery window, then Sunrun and SVCE will discuss how and whether to move forward or exclude these accounts from the committed capacity and/or the flagship elements.

8. Parallel Efforts

While working through marketing elements, SVCE will continue to support Sunrun in doing the data analysis needed.

Evaluation, measurement and verification (EM&V) is important to SVCE to ensure that its programs are effective in achieving their goals, and to inform future and ongoing efforts. Some level of EM&V may be deemed appropriate by SVCE, such as customer satisfaction and level of impact for effort, and Sunrun will support SVCE’s efforts in connecting with customers or tracking key metrics. SVCE and Sunrun will further discuss and develop an EM&V Plan to guide this work.

To help streamline the installation of projects, SVCE may facilitate one or more meetings between Sunrun and SVCE member cities’ building officials and fire officials. The goal would be to reach all authorities

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having jurisdiction that may receive a project before the permits need to be routed through those cities. Informing relevant officials ahead of time will support the goal of streamlining project installation. SVCE and Sunrun will work to develop the objectives, agenda and scheduling of any meeting(s).

9. Coordination with Other SVCE Programs

SVCE has other ongoing programs that may also be able to support (or draw support from) the work being done by Sunrun. As far as it is beneficial for one or more programs, SVCE will keep Sunrun apprised of opportunities for coordination. Sunrun should plan to coordinate with at least the following programs:

- California Electric Vehicle Infrastructure Project (CALeVIP): This program provides first-come, first-served incentives for level 2 electric vehicle infrastructure. There are stipulations, but multifamily properties are eligible for incentives that can cover up to 75% of project costs. SVCE expects the program to open in Fall 2020.
- Resilience Efforts: Due to COVID-19 impacts in SVCE communities, SVCE recently allocated \$10M to support customer relief and community resilience. For funds deployed towards community resilience, support for energy resilience at critical or city facilities could be a natural fit for Sunrun and may be eligible for additional SVCE funding.
- Multifamily Housing EV Infrastructure Technical Assistance: SVCE is in the process of launching a technical assistance program for multifamily properties to learn about and select electric vehicle charging infrastructure to be deployed on their property. Sunrun may refer people to that program or receive referrals from people by that program, at the interest of the site host.
- Customer Resource Center (online website): SVCE is developing a new set of online resources that will help all customers better understand energy usage and technologies. Solar, storage, heat pumps, electric vehicles, electric vehicle chargers, and smart thermostats are all examples of technologies that will be explained, marketed, and potentially incentivized through this website. Sunrun's offerings shall be incorporated into the broader Customer Resource Center framework as mutually agreed, and ongoing materials and communications should refer customers to SVCE's online resources as applicable.

10. Data Integration

While SVCE and Sunrun have already begun sharing data to facilitate customer identification, there is additional need for data sharing to support ongoing operations. Accordingly, Sunrun will work with SVCE staff to establish integration or regular transfer of data to SVCE databases. This will include SVCE's customer relationship management system and SVCE's overall customer database (DAISY). The data provided by Sunrun to SVCE to add to its databases will be customer specific and include insights developed through customer interactions.

SVCE is seeking relevant information on customer interactions (to include some or all of the following, on a portfolio basis: average installation size, customer costs, and value streams delivered by the program to customers and/or Sunrun); other technical information gathered through the installation process (to include some or all of the following, at a customer-specific level, for a mutually agreed-upon sample of customer projects: electrical panel size and load, individual customer contact information, and installation specifics); and other data of interest to SVCE in its role as a community provider of carbon-free energy and administrator of decarbonization programs.

Additional requirements regarding sharing of customer project-specific information are discussed in Appendix III of the Amended and Restated Behind the Meter Energy Storage Agreement for Resilience. It should also be noted that SVCE and Sunrun will mutually determine categories of data to be shared pertaining to program deployment and management, along with the related transfer process from Sunrun to SVCE, as part of EM&V Plan development.

11. GTM Metrics

As a component of SVCE's oversight of the project, Sunrun shall provide reporting on key performance indicators (KPIs) for the duration of customer engagement and through the end of project lifetimes. Reporting shall start at a 2-week frequency until such point that all customers have signed contracts. At such a point, reporting shall transition to a 2-month frequency. Metrics may include:

- Number of consultations
- Number of signed contracts
- Number of installations
- Capacity of installs
- Capacity interconnected
- Project issues

Sunrun should also provide a brief summary of key lessons that have been learned, takeaways, and adjustments being made to improve the program in each report.

12. Timeline

To establish expectations around when reviews and materials will need to be completed, the following table of milestones will be used. This GTM Plan mostly indicates agreement on certain processes and roles, but additional work must be done to reach agreement on the elements necessary to deliver a successful program. These dates are approximations. Sunrun will provide SVCE sufficient time to respond with feedback/approval and direction for each relevant component as stipulated in this GTM Plan.

Section	Component	Expected Work Timeframe
I. Outreach Materials	SVCE provides direction on additional marketing messages	
	Review Sunrun marketing documents	
	SVCE program webpage complete	
	Finalize list of priority customers	

II. Customer Outreach Process – Single-Family	SVCE shares masked data for determining priority customer lists for possible SVCE targeted outreach	<i>[Completed in advance of contract execution]</i>
	Sunrun determines priority customer lists for possible SVCE targeted outreach	
	Establish Sunrun campaign approach and materials	
	Launch Sunrun campaign and implement outreach	
	Execute direct outreach through SVCE channels targeting the priority customer lists <i>[to be completed at SVCE discretion]</i>	
	Project installation/customer enrollment	
III. Customer Outreach Process - Multifamily	Establish campaign approach and materials, as relevant/required	
	Launch campaign and implement outreach as relevant/required	
	Project installation/customer enrollment	
IV. Ongoing Customer Support	Customer support to SVCE customer participants	
V. Flagship Elements	Determine which, if any, mutually-agreed upon flagship elements to include as part of single-family-customer-facing program presentment	
	Integrate relevant flagship elements into single-family-customer-facing program presentment	

	Discuss opportunities at qualified multifamily properties, offer flagship elements, and support interested sites	
VI. Parallel Efforts	Establishment of data transfer processes from Sunrun to SVCE	
	Possible meetings with relevant city officials	
	EM&V Plan complete	
VII. Data Integration	Establishment of data transfer processes from Sunrun to SVCE	
VIII. GTM Metrics	Sharing of KPIs and summary of lessons learned	

13. Customer Program Incentive

A \$1,000 Program Participation Incentive - or alternate incentive payment, as mutually agreed-upon by SVCE and Sunrun - will be paid by Sunrun to each single-family customer enrolled in the program to reflect benefits associated with the SVCE/Sunrun grid services program. This incentive shall be paid to the customer after the customer's system, built pursuant to a Sunrun Customer Agreement, reaches permission to operate with the customer's utility provider. Sunrun and SVCE will further discuss how to present this incentive to the customers (including who sends the incentive, the form it takes, and what language is included to explain the source of the incentive).

Multifamily residential customers will receive free solar credits through Virtual Net Metering and backup for common area loads (only projects located in high fire threat or that experienced two or more PSPS events). Multifamily property owners/managers responsible for paying for the systems will be connected with relevant, available incentives and funding. As mutually agreed upon by SVCE and Sunrun, an incentive payment or alternative financial benefit to reflect benefits associated with the SVCE/Sunrun grid services program will be calculated and paid to each multifamily project.

14. Definitions

AS USED IN THIS APPENDIX XI, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW:

“Co-Marketing Materials” means the messaging and materials, whether print, digital, telephone scripts or otherwise, produced by either Party for the Residential Solar Products, which may include SVCE Trademarks and Sunrun Trademarks.

“Residential Solar Products” means any product offering to a customer in which a photovoltaic system, with or without a battery storage element, is both (i) installed on the residential property of such customer; and (ii) (a) owned by a person other than such customer, including but not limited to contractual arrangements pursuant to which such photovoltaic system is leased to such customer or pursuant to which

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electricity from such photovoltaic system is sold to such customer under a power purchase agreement; or (b) purchased by such customer or financed by such customer through home equity lines of credit, home equity loans, same-as-cash financing, any municipal financing program(s), or any other direct sale and/or financing mechanism.

“Trademarks” means any trademark, service mark, logo, brand or other product positioning or other distinctive brand element, or any content or other work of authorship, that are provided by for use in connection with this Agreement, in each case relating to a Party or any of its products or services.

15. Approval to Use Co-Marketing Materials

Any Co-Marketing Materials created by the Parties (the “Creating Party”) must first be submitted to other party (the (“Approving Party”) along with a description of the proposed intended use(s) for the Approving Party’s approval, in its sole and absolute discretion prior to any use of such Co-Marketing Materials under this Agreement. The Approving Party shall provide written approval or objection to the proposed use of the Co-Marketing Materials within ten business days of receipt of such submission by the Creating Party, and if the Approving Party does not provide a written response in such ten day period, the Approving Party shall be deemed to have denied the proposed use of the Co-Marketing Materials created by the Creating Party. Sunrun agrees to include a disclaimer of SVCE liability in communications with customers that reference SVCE, if requested by SVCE. Such disclaimer may be substantially similar to the following, subject to SVCE’s right to revise:

“SVCE does not endorse or guarantee, and makes no warranties or representations regarding, any vendor, contractor, service or product. SVCE shall not be liable for any loss or damage of any kind arising out of or connected to any vendor, contractor, service or product. Any transactions that you enter into with a vendor, contractor or other third party are solely between you and that vendor, contractor or other third party.”

16. Expenses

UNLESS OTHERWISE AGREED TO BY THE PARTIES IN WRITING, EACH PARTY SHALL BEAR THEIR OWN COSTS AND EXPENSES IN CONNECTION WITH THIS AGREEMENT.

17. Acknowledgment of similar SVCE programs

The parties acknowledge that SVCE plans to offer its customers a variety of resources and programs, itself or with other consultants, that may relate to the subject matter of this Agreement. This includes SVCE’s Innovation Onramp pilot programs and SVCE’s online customer-facing resources (the “eHub” or “Customer Resource Center”) which include the pickmysolar tool. The parties acknowledge that SVCE will continue to offer these resources and programs to customers, including the marketing thereof, during this Agreement. SVCE may further choose to offer customer incentives or other programs to customers, even those relating to the subject matter of this Agreement, without exclusion.

SVCE will not offer its single-family and multifamily customers a program comparable to that outlined in this Agreement and GTM Plan prior to the Initial Delivery Date. For a program to be comparable, it would need to include both co-marketing elements to facilitate deployment/installation of projects at customer sites and payments from SVCE for load modification or capacity. Direct customer incentives for solar or storage offered through the eHub, or purchasing capacity from aggregated, primarily existing resources, will not be considered comparable programs. If SVCE wishes to offer a comparable program to the relevant customers, SVCE will inform Sunrun and either work together to amend this GTM Plan or move forward with SVCE’s right to terminate the GTM Plan.

18. Trademark License, Ownership & Restrictions

(a) Subject to the terms of this Agreement, (i) SVCE grants to Sunrun a royalty-free, nonexclusive, nontransferable, non-sublicensable, revocable license to use the SVCE Trademarks for use in connection with co-offering of the Residential Solar Product during the Term, including, without limitation, the creation of the Co-Marketing Materials and the promotion and distribution of Co-Marketing Materials across Sunrun's offline and online marketing channels in connection with this Agreement and (ii) Sunrun grants to SVCE a royalty-free, nonexclusive, nontransferable, non-sublicensable, revocable license to use the Sunrun Trademarks for use in connection with co-offering of the Residential Solar Product during the Term, including, without limitation, the promotion and distribution of Co-Marketing Materials across SVCE's offline and online marketing channels in connection with this Agreement.

(b) SVCE shall own all rights in the SVCE Trademarks and reserves the right to use the SVCE Trademarks and license the SVCE Trademarks to other entities, and no provision of this Agreement shall be construed to effect any present or future transfer of title to Sunrun or to any Affiliate of Sunrun with respect to any of the SVCE Trademarks or other property of SVCE. Except as expressly provided in this Agreement, Sunrun or any Affiliate of Sunrun will not: (i) transfer, sell, license, sublicense, distribute or commercially exploit the SVCE Trademarks; (ii) modify, reproduce, create derivative or collective works from, or in any way otherwise exploit the SVCE Trademarks in whole or in part, or (iii) contest, oppose or challenge SVCE's ownership of the SVCE Trademarks or impair SVCE's ownership or rights in the SVCE Trademarks in any way. Sunrun agrees that it shall only use the form of SVCE Trademarks as directed by SVCE in writing.

(c) Sunrun shall own all rights in the Sunrun Trademarks and reserves the right to use the Sunrun Trademarks and license the Sunrun Trademarks to other entities, and no provision of this Agreement shall be construed to effect any present or future transfer of title to SVCE or to any Affiliate of SVCE with respect to any of the Sunrun Trademarks or other property of Sunrun. Except as expressly provided in this Agreement, SVCE or any Affiliate of SVCE will not: (i) transfer, sell, license, sublicense, distribute or commercially exploit the Sunrun Trademarks; (ii) modify, reproduce, create derivative or collective works from, or in any way otherwise exploit the Sunrun Trademarks in whole or in part, or (iii) contest, oppose or challenge Sunrun's ownership of the Sunrun Trademarks or impair Sunrun's ownership or rights in the Sunrun Trademarks in any way.

Notwithstanding anything herein, neither party shall use the Trademarks of the other party without the prior written consent of such Party.




19. Termination Of GTM Plan

The Parties shall have the right to terminate this GTM Plan with or without cause by giving notice of termination to the other Party. Any such notice shall specify the effective date of termination ("**GTM Termination Date**"), which shall be no sooner than ninety (90) days after the date of the notice to the extent allowable under applicable law. Upon the GTM Termination Date, the Parties shall immediately discontinue all further use of the other Party's Trademarks, the Co-Marketing Materials, and any mark or marks that be may confusingly similar thereto. Termination of the GTM Plan affects only the activities described in the GTM Plan and does not impact the rest of the Agreement.

Notwithstanding the preceding paragraph, SVCE shall continue to be able to host a webpage describing the LMA contract, program, and relationship with Sunrun.

Schedule I

Sunrun Trademarks

OWNER	TRADEMARK	COUNTRY	REGISTRATION NO.
Sunrun Inc.	Brightbox	United States of America	87335960, 87335949
Sunrun Inc.	Sunrun	United States of America	85168901, 86403447
Sunrun Inc.		United States of America	85594817
Sunrun Inc.		United States of America	87222682, 85594817
Sunrun Inc.		United States of America	87222682, 85594817

Schedule II

SVCE Trademarks

APPENDIX XII

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APPENDIX XIII

FORM OF LOAD MODIFYING RESOURCE DISPATCH PLAN

APPENDIX XIV

PORTFOLIO VALUE SUMMARY

				Load Modification
Customer Service Account Number	Customer Name	Inverter Power (kW)	Battery Energy (kWh)	Load Modification Nomination (kW)

END OF AGREEMENT

CONFIDENTIAL**SVCE BEHIND THE METER LOAD MODIFYING AGREEMENT
July 2020)****BEHIND THE METER
ENERGY STORAGE AGREEMENT FOR RESILIENCE
COVER SHEET**

Seller: Sunrun Inc., a Delaware corporation

Buyer: Silicon Valley Clean Energy Authority, a California joint powers authority

Execution Date: August 14, 2020

Description of Portfolio:

Contract Amount (Load Modification):

Minimum of [REDACTED] kW (“Minimum Commitment Contract Amount”) for _4_ hours per day

Not to Exceed [REDACTED] kW (“Maximum Commitment Contract Amount”) for _4_ hours per day

Contract Price (Load Modification): \$[REDACTED]/kW-month

Contract Amounts (Capacity Attributes):¹

RA Attributes:

Minimum of [REDACTED] kW (“Minimum Commitment Contract Amount”)

Not to Exceed [REDACTED] kW (“Maximum Commitment Contract Amount”)

Local RA Attributes

Minimum of [REDACTED] kW (“Minimum Commitment Contract Amount”)

Not to Exceed [REDACTED] kW (“Maximum Commitment Contract Amount”)

Contract Price (Capacity Attributes): \$[REDACTED]/kW-month

¹ NTD: Capacity Attributes will apply in event of Product Transition from LM to RA pursuant to Section 5.2(b).

Milestones:²

Milestone	Date
Customer Agreements Signed	10% of Contract Amount by: January 15, 2021 25% of Contract Amount by: September 15, 2021 50% of Contract Amount by: July 15, 2022 Remaining Contract Amount by: October 15, 2022
Load Modifying Supply Plan Submitted	March, 2021
Construction Start Deadlines	10% of Contract Amount by: March 31, 2021 25% of Contract Amount by: November 15, 2021 50% of Contract Amount by: August 15, 2022 Remaining Contract Amount by: November 15, 2022
Expected Initial Delivery Date	December 31, 2022

Delivery Term: __10__ Contract Years

² NTD: Host customer-related matters are addressed in Appendix XI; milestones in this agreement focus on other key project development tasks.

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ENERGY STORAGE AGREEMENT FOR RESILIENCE

This Energy Storage Agreement for Resilience (“**Agreement**”) is made by and between the buyer (“**Buyer**”) and the seller (“**Seller**”) as of the execution date (“**Execution Date**”), in each case as set forth on the cover sheet (“**Cover Sheet**”) to this Agreement. Seller and Buyer are referred to each individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Portfolio; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

1.1 **Contract Definitions.** Capitalized terms used in this Agreement have the following meanings, unless otherwise specified:

“**Affiliate**” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, through one or more intermediaries.

“**Agreement**” has the meaning set forth in the preamble.

“**Ancillary Services**” has the meaning set forth in the CAISO Tariff.

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff.

“**Balancing Authority**” has the meaning set forth in the CAISO Tariff.

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator,

receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Bid” shall have the meaning in the CAISO Tariff.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Buyer Group” has the meaning set forth in Section 15.1.

“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 Owners that have been placed under the CAISO’s operational control.

“CAISO Markets” has the meaning set forth in the CAISO Tariff.

“CAISO Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

“Capacity Attributes” means, any and all of the following attributes:

- (a) RA Attributes,
- (b) Local RA Attributes,
- (c) Flexible RA Attributes, and
- (d) Other Capacity Attributes.

“CARB” means the California Air Resources Board or any successor entity performing similar functions.

“CARE” means the California Alternate Rates for Energy Program and any successor thereto.

“CEC” means the California Energy Commission or any successor entity performing similar functions.

“Change of Control” means, except in connection with public market transactions of equity interests of Seller’s Ultimate Parent, any circumstance in which Seller’s Ultimate Parent as of the Execution Date ceases to be the Ultimate Parent or ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity

interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"Charging Energy" means the amount of Energy withdrawn from the Utility Distribution Company's electrical system, Participating Transmission Owner's electrical system, the CAISO Grid, or otherwise, to be stored by the Portfolio.

"Claim" has the meaning set forth in Section 15.1(a).

"Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and any other resource adequacy or capacity procurement requirements, or associated reliability requirements, imposed on Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, by the CAISO, by the WECC, by NERC, or by any other Governmental Authority having jurisdiction.

"Compliance Showings" means the total combination of (a) through (d) below that a Load Serving Entity (as defined in the CAISO Tariff) is required to make to the CPUC pursuant to the CPUC Decisions, or to any Governmental Authority having jurisdiction: (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), (c) Flexible RAR compliance or advisory showings (or similar or successor showings), and (d) other Capacity Attributes compliance or advisory showings (or similar or successor showings).

"Conditions Precedent" has the meaning set forth in Section 4.2.

"Confidential Information" has the meaning set forth in Section 20.1.

"Confirmation Notice" means a Downward Change Confirmation Notice or an Upward Change Confirmation Notice, as applicable.

"Construction Delay Cure Period" has the meaning set forth in Section 3.1(c).

"Construction Delay Damages" means daily liquidated damages in an amount equal to

[REDACTED]

"Construction Start" means (i) acquisition of all Governmental Approvals necessary for the construction of the applicable Project(s), (ii) engagement of each Contractor, (iii) execution of each required Customer Agreement for such Project(s), and (iv) ordering of all essential equipment

and supplies, in each case (i)-(iv), as reasonably necessary so that physical construction of the applicable Projects of the Portfolio may begin and proceed to completion without foreseeable interruption of material duration.

“Construction Start Deadline” has the meaning set forth in the Cover Sheet.

“Contract Price” means the amount specified in Section 5.2(d).

“Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.

“Contractor” means the EPC Contractor and its subcontractors, as well as Seller or Seller’s Affiliates if any such entities are developing, constructing, operating or maintaining the Portfolio during the Term, and any entity or person under contract with Seller or Seller’s Affiliates for the purpose of developing, constructing, operating or maintaining the Portfolio during the Term.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements that replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“Cover Sheet” has the meaning set forth in the preamble to this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM” means “Capacity Procurement Mechanism” and has the meaning set forth in the CAISO Tariff and is inclusive of any successor mechanisms authorized by CAISO.

“CPM Capacity” has the meaning set forth in the CAISO Tariff.

“CPUC” or **“Commission”** means the California Public Utilities Commission or any successor entity performing similar functions.

“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, 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.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) 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 or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Critical Milestone” has the meaning set forth in Section 3.5.

“Customer” means a Person that is a retail electric customer of Buyer.

“Customer Agreement” means Seller’s agreement with a Customer for the installation and operation of a Project as part of the Portfolio.

“Customer Information” means Customer-related information that is subject to CPUC rules, regulations or orders or other applicable Laws regarding customer privacy, including California Public Utilities Code Section 8380 et seq.

“DAC” means disadvantaged community as defined by CPUC regulations and published guidance.

“Damage Payment” means the dollar amount equal to the total amount required to be posted by Seller as Development Security pursuant to Section 10.1.

“Defaulting Party” means the Party that is subject to an Event of Default.

“Delay Damages” means any Construction Delay Damages or IDD Delay Damages.

“Delay Notice” has the meaning set forth in Section 4.1(b)(i).

“Delivered Quantities” has the meaning set forth in Section 5.2(c).

“Delivery Term” has the meaning set forth in Section 2.2(b).

“Delivery Term Security” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED] of the Contract Amount that has reached the Initial Delivery Date at the time of calculation.

“Development Security” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED] per kilowatt of the Minimum Commitment Contract Amount.

“Disclosing Party” has the meaning set forth in Section 20.2.

“Disclosure Order” has the meaning set forth in Section 20.2(a).

“Disclosure Request” has the meaning set forth in Section 20.2(b).

“Dispatch Plan Deadline” means, with respect to each year of the Delivery Term, March 20, or such other date which is 30 days prior to the date on which Buyer is required to submit its annual aggregate peak demand forecast pursuant to rules and published guidance of the CEC. If the Dispatch Plan Deadline is prior to March 20 Buyer shall provide Seller notice of the adjustment 30 days prior to the new deadline.

“Downward Change Confirmation Notice” has the meaning set forth in Section 6.7(a)(i).

“Downward Change Notice” has the meaning set forth in Section 6.7(a)(i).

“Early Termination Date” has the meaning set forth in Section 7.2(a).

“EFC” or **“Effective Flexible Capacity”** has the meaning given to “Effective Flexible Capacity” in the CAISO Tariff.

“Electric System Upgrades” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Portfolio to the Utility Distribution Company’s/Participating TO’s electric system for delivery of Energy from the Portfolio such that the Portfolio can provide Product at all times during the Delivery Term.

“Energy” means single- or three-phase, 60-cycle alternating current electric energy, measured in MWhs.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Portfolio’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 or Portfolio, 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, marketable emission trading credits, and 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 a Site or the Portfolio.

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.

“Event of Default” means a Seller’s Event of Default or a Party’s Event of Default.

“Execution Date” has the meaning set forth in the preamble.

“Exigent Circumstance” means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Portfolio or portion thereof.

“Expected Initial Delivery Date” has the meaning set forth on the Cover Sheet.

“FERA” means the Family Electric Rate Assistance Program and any successor thereto.

“FERC” means the Federal Energy Regulatory Commission or any successor entity performing similar functions.

“Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes, Local RA Attributes, or Other Capacity Attributes.

“Flexible RAR” means the flexible resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Authority having jurisdiction.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Agreement, but only if and to the extent (x) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation excused thereby, (y) the Party seeking to have its performance obligation excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under the Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (z) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Additionally:

(a) Force Majeure may include:

(i) acts of God, including landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather-related events affecting an entire region which caused failure of performance;

(ii) transportation accidents affecting delivery of equipment only if such accident occurs prior to the applicable Commercial Operation Date;

(iii) sabotage, riot, acts of terrorism, war and acts of public enemy;

(iv) restraint by court order or other Governmental Authority; or

(b) Force Majeure does not include:

(i) COVID-19 related restrictions imposed by Governmental Authorities as currently in place as of the Effective Date;

(ii) a failure of performance of any third party, including Participating TO, Utility Distribution Company, or any other party providing electric interconnection, distribution or transmission service;

(iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

(iv) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Portfolio;

(v) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(vi) Seller's inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Portfolio, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vii) Seller's inability to complete interconnection by the applicable Expected Initial Delivery Date, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) Seller's inability to obtain sufficient Charging Energy, fuel, power or materials to operate the Portfolio, except if Seller's inability to obtain sufficient Charging Energy, fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(ix) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(x) Seller's failure to obtain Site Control, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(xi) Seller's failure to obtain or retain Customers; or

(xii) any failure of a Customer to perform (whether or not due to Force Majeure affecting a Customer).

"Force Majeure Failure" has the meaning set forth in Section 8.1(d).

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

“Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

“Go to Market Plan” (“GTM Plan”) refers to the processes and obligations jointly agreed to by the Parties as set forth in Appendix XI.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the development, use and operation of the Portfolio, including any approvals required under the California Environmental Quality Act.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“IDD Cure Period” has the meaning set forth in Section 4.1(b)(i).

“IDD Delay Damages” means daily liquidated damages in an amount equal to (a) the total Development Security amount required hereunder, divided by (b) [REDACTED].

“Indemnifiable Loss(es)” has the meaning set forth in Section 15.1(a).

“Initial Delivery Date” has the meaning set forth in Section 2.2(b).

“Interconnection Agreement” means the agreement(s) and associated documents (or any successor agreement and associated documentation approved by FERC or the CPUC) by and among Seller or a Customer and, as applicable, the Utility Distribution Company, the Participating Transmission Owner, and the CAISO, governing the terms and conditions of the interconnection of the Projects with the Utility Distribution Company’s or CAISO’s grid, including any description of the plan for interconnecting the Projects to the applicable grid.

“Interest Rate” has the meaning set forth in Section 9.2.

“Joint Powers Agreement” means that certain Joint Powers Agreement of Buyer, dated as of March 31, 2016, by and among the City of Campbell, City of Cupertino, City of Gilroy, City

of Los Altos, Town of Los Altos Hills, Town of Los Gatos, City of Monte Sereno, City of Morgan Hill, City of Mountain View, County of Santa Clara (Unincorporated Area), City of Saratoga, and the City Sunnyvale.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Term; or any binding interpretation of the foregoing.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Portfolio, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Portfolio or purchasing equity ownership interests of Seller or its Affiliates for purposes of providing financing or refinancing for the Portfolio, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Portfolio.

“Letter of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Appendix V.

“LIBOR” means the London Interbank Offered Rate for the corresponding deposits of U.S. dollars.

“Load Modification” means the reduction of Buyer’s aggregate peak demand forecast pursuant to applicable CEC regulations and published guidance.

“Load Modifying Resource” means a behind the meter generation or storage system that is capable of being dispatched to provide Load Modification.

“Load Modifying Resource Dispatch Plan” means a one-year plan, submitted for each calendar year of the Delivery Term, specifying on a month by month basis the hours of day during which the Contract Amounts will be delivered from the Portfolio and substantially in the form of Appendix XIII.

“Local Capacity Area” has the meaning set forth in the CAISO Tariff.

“Local RA Attributes” means any and all resource adequacy attributes or other locational attributes related to a Local Capacity Area, as may be identified at any time during the Delivery

Term by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with a physical location or point of electrical interconnection within the CAISO's Balancing Authority, that can be counted toward a Local RAR.

"Local RAR" means the local resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to CPUC Decisions, 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.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then "Losses" shall exclude any loss of federal or state tax credits, grants, or benefits related to the Portfolio or generation therefrom or any costs or fees related to the Site or Portfolio.

"Low Income" means, with respect to a Customer, that such Customer has a household income at or below eighty percent (80%) of Santa Clara County's median income or at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Health and Safety Code (H&SC) Section 50093.

"Maximum Commitment Contract Amount" has the meaning set forth in the Cover Sheet.

"Medical Baseline Program" means the program administered by the Utility Distribution Company that provides a financial benefit to customers who have special energy needs due to qualifying medical conditions, and any successor program thereto.

"Minimum Commitment Contract Amount" has the meaning set forth in the Cover Sheet.

"Monthly Payment" has the meaning set forth in Section 5.2(d).

"Moody's" means Moody's Investors Service, Inc., or its successor.

"MUA Decision" has the meaning set forth in Section 4.2(p).

"Must Offer Obligations" means Seller's obligation to Bid or cause Seller's SC to Bid the Portfolio into the CAISO Markets due to delivery of the Product to Buyer and in accordance with the CAISO Tariff.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“**Non-Availability Charges**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 7.2(a).

“**Non-Spinning Reserve**” has the meaning set forth in the CAISO Tariff.

“**Notice**” unless otherwise specified in this Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Notice of Claim**” has the meaning set forth in Section 15.2(a).

“**Notify**” means to provide a Notice.

“**NOC**” or “**Net Qualifying Capacity**” has the meaning given to “Net Qualifying Capacity” in the CAISO Tariff as may be updated from time to time.

“**Operational Characteristics**” means the operational characteristics set forth in Appendix II.

“**Other Capacity Attributes**” means, exclusive of RA Attributes, Local RA Attributes, and Flexible RA Attributes, any (a) current or future capacity characteristics or attributes, including the ability to generate or charge at given capacity levels, the ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes, as may be identified at any time during the Delivery Term by any applicable Law, or voluntary or mandatory program of any Governmental Authority or other Person, (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition, and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward any Compliance Obligations.

“**Other Programs**” has the meaning set forth in Section 5.4(f).

“**Participating Transmission Owner**” or “**Participating TO**” means an entity that (a) owns, operates and maintains transmission lines and associated facilities or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities or entitlements to be made part of the CAISO Grid.

“**Party**” or “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Party’s Event of Default**” has the meaning set forth in Section 7.1(b).

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Development Security and Delivery Term Security.

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Portfolio” means the energy storage facility consisting of Projects at multiple Sites, as further described in Appendix I, as such may be revised from time to time in accordance with this Agreement.

“Portfolio Modification” has the meaning set forth in Section 5.4(c).

“Pricing Node” or **“PNode”** has the meaning set forth in the CAISO Tariff.

“Product” has the meaning set forth in Section 5.1(a).

“Product Transition Trigger” shall mean either of the following (1) the CEC no longer accepts Buyer’s submission of Load Modifying Resources as a means of reducing Buyer’s annual peak demand forecast, or (2) the proportion between the aggregate amount of Load Modifying Resources related to the Portfolio submitted by Buyer, to the aggregate CEC reduction in Buyer’s annual peak demand forecast, falls below eighty percent (80%).

“Progress Report” means a reasonably detailed progress report including the items set forth in Appendix III.

“Project” means each behind-the-retail-meter energy storage facility installed at a Site as more particularly described in Appendices I, II, and IX, including all appurtenant facilities, communications and control systems, and equipment, from which Seller has agreed to provide Product to Buyer pursuant to this Agreement.

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements, as such Safeguards and Safety Requirements are generally outlined in Appendix VI.

“Proxy Demand Resource” or **“PDR”** has the meaning set forth in the CAISO Tariff.

“Prudent Operating Practice” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to energy storage facilities during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with

good business practices, reliability, safety and expedition. Prudent Operating Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence. Prudent Operating Practices also includes taking reasonable steps to ensure that:

(a) Safeguards are implemented and maintained for the Portfolio and at each Site and are sufficient to address reasonably foreseeable incidents;

(b) equipment, material, and supplies are sufficient and accessible to operate the Portfolio safely and reliably;

(c) operating personnel are trained, equipped, and capable of responsible operation and maintenance of the Portfolio and at each Site, including identifying and responding to System Emergencies, emergencies, or Exigent Circumstances originating from or impacting the Portfolio or Site;

(d) the Portfolio's material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power or energy storage facilities operating in the relevant region; and

(e) the Portfolio is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

"RA Attributes" means, any and all resource adequacy attributes, exclusive of any Local RA Attributes, Flexible RA Attributes and Other Capacity Attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction, that can be counted toward RAR and Local RAR.

"Receiving Party" has the meaning set forth in Section 20.2(b).

"Regulatory Disclosure" has the meaning set forth in Section 20.2(a).

"Reliability Demand Response Resource" or **"RDRR"** has the meaning set forth in the CAISO Tariff.

"Reliability Organization" means an "Electric Reliability Organization" as defined in Section 215(a)(2) of the Federal Power Act or a "regional entity" as defined in Section 215(a)(7) of the Federal Power Act.

"Remedial Action Plan" has the meaning set forth in Section 3.5.

"Remediation Event" means the occurrence of any of the following with respect to the Portfolio or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by

Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Portfolio's operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 11.2, in its reasonable discretion, that the Project Safety Plan is not consistent with the Safety Requirements; or (g) any actual condition related to the Portfolio or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Portfolio or a Site.

"Remediation Period" means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) days if Seller is unable to resolve the Remediation Event within the initial ninety (90) day period despite exercising diligent efforts (and Buyer shall not unreasonably withhold approval of such extension).

"Requirements" means Prudent Operating Practices and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CEC, CPUC, CARB, FERC, NERC and WECC.

"Resold Product" has the meaning set forth in Section 5.1(b).

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

"Resource Adequacy Plan" has the meaning set forth in the CAISO Tariff.

"Resource Adequacy Requirement" or **"RAR"** means the Resource Adequacy or successor program requirements established by the CPUC, CAISO or any other regional entity, including submission of a Supply Plan or Resource Adequacy Plan.

"RMR" means **"Reliability Must-Run"** and has the meaning set forth in, and as used in, the CAISO Tariff.

"RMR Contract" has the meaning set forth in the CAISO Tariff.

"RMR Generation" has the meaning set forth in the CAISO Tariff.

"S&P" means Standard and Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"Safeguard" means any procedures, practices, or actions with respect to the Portfolio, a Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

“Safety Remediation Plan” means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

“Safety Requirements” means Prudent Operating Practices, and all applicable safety-related (construed broadly) requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, FERC, NERC and WECC.

“Scheduling Coordinator” or **“SC”** has the meaning set forth the CAISO Tariff. Under the terms of this Agreement, the SC may be Seller or Seller’s designated agent (i.e., a third-party).

“SEC” means the U.S. Securities and Exchange Commission, or any successor entity performing similar functions.

“Security Interest” has the meaning set forth in Section 10.3(a).

“Seller” has the meaning set forth in the preamble to this Agreement.

“Seller’s Event of Default” has the meaning set forth in Section 7.1(a).

“Seller’s Initial Portfolio List” has the meaning set forth in Section 4.2.

“Seller’s Portfolio” means the Customers and the corresponding Sites assembled by Seller for purposes of delivering the Product to Buyer under this Agreement, as such Seller’s Portfolio may be amended in accordance with this Agreement from time to time.

“Seller’s Portfolio List” has the meaning set forth in Section 5.4(d).

“Serious Incident” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Portfolio or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than [REDACTED]; (d) release of hazardous material above the limits, or violating the requirements, established by Permits, codes, standards, regulations, Laws or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“Settlement Amount” means an amount equal to the greater of (a) the amount of Delivery Term Security required under this Agreement and (b) the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Shortfall” means any difference between a Delivered Quantity and a Contract Amount.

“Shortfall LDs” means a dollar amount equal to twelve (12) times the product of the Contract Amount and the Contract Price, paid by Seller to Buyer within thirty (30) days of a failure by Seller to deliver Delivered Quantities equal to the Contract Amounts in any month during the Delivery Term, or thereafter drawn by Buyer from the Delivery Term Security.

“Showing Month” incorporates each day of each calendar month of the Delivery Term that is the subject of the Compliance Showings, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Execution Date, the monthly Compliance Showings made in June are for the Showing Month of August and the annual Compliance Showing made in October is for the twelve (12) Showing Months of the following year.

“Site(s)” means the real property on which the Portfolio is located, as identified in Appendix I and Appendix VIII, as updated by Seller pursuant to Section 5.4(d).

“Site Control” means that Seller owns the Site and the Portfolio or has demonstrable contractual real property rights to the Site sufficient for the permitting, control, development and operation of the Portfolio.

“Spinning Reserve” has the meaning set forth in the CAISO Tariff.

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“Supplying Party” has the meaning set forth in Section 20.2(b).

“System Emergency” has the meaning set forth in the CAISO Tariff.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Term” has the meaning set forth in Section 2.2(a).

“Terminated Transaction” has the meaning set forth in Section 7.2(a).

“Termination Payment” has the meaning set forth in Section 7.3.

“Transmission Provider” means the CAISO.

“Ultimate Parent” means the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Upward Change Confirmation Notice” has the meaning set forth in Section 6.7(a)(ii).

“Upward Change Notice” has the meaning set forth in Section 6.7(a)(ii).

“Utility Distribution Company” has the meaning set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council or its successor entity with similar functions.

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an article, section, paragraph, clause, Party, appendix, or exhibit is a reference to that section, paragraph, clause of, or that Party, appendix, or exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(l) the terms "year" and "calendar year" mean the period of months from January 1 through and including December 31; the term "month" means a calendar month unless otherwise indicated, and a "day" means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a "day" may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively;

(m) unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed;

(n) when an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific Standard time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day;

(o) all references to Product mean each and all components of the Product unless the context infers a particular component of Product; and

(p) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Article 2: TERM

2.1 **Effectiveness.** Upon execution by both Parties, this Agreement shall be effective and binding as of the Execution Date.

2.2 **Term.**

(a) The “**Term**” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Term (unless terminated earlier in accordance with the terms of this Agreement).

(b) The “**Delivery Term**” is the period commencing on the Initial Delivery Date and continuing for the number of Contract Years specified on the Cover Sheet. The “**Initial Delivery Date**” is the first day of the first calendar month for which Product in the Contract Amounts is delivered; provided that Initial Delivery Date may not occur until satisfaction of the Conditions Precedent set forth in Article 4

1.2 **Quantity.**

(a) Seller shall deliver to Buyer the Product in the Contract Amount specified on the Cover Sheet. Buyer will compensate Seller for all Product delivered in accordance with Section 5.2(c) up to but not exceeding the Maximum Contract Amount.

(b) If, at the end of the first year of the Delivery Term, Buyer and Seller agree that the Portfolio is capable of delivering Product in excess of the Maximum Commitment Contract Amount, Buyer and Seller may mutually agree to adjust and increase the Contract Amount (the “**Adjusted Contract Amount**”). Any agreement to an Adjusted Contract Amount shall be in writing and shall document the resulting increase in Delivery Term Security and any other terms of this Agreement impacted by the Adjusted Contract Amount.

Article 3: PORTFOLIO DEVELOPMENT

3.1 **Portfolio Construction.**

(a) Seller shall develop, design and construct the Portfolio in timely fashion in order to perform Seller’s obligations under this Agreement.

(b) Seller shall cause Construction Start to occur for the applicable Projects no later than the applicable Construction Start Deadline. Seller shall provide Notice to Buyer certifying the satisfaction of this Section 3.1(c) on or before the applicable Construction Start Deadline.

(c) If Construction Start is not achieved on or before the applicable Construction Start Deadline, then for each day beginning with the day after the applicable Construction Start Deadline through and including the date on which Construction Start occurs for the required Projects, for a period beyond the applicable Construction Start Deadline lasting no more than one-hundred twenty (120) days (“**Construction Delay Cure Period**”), Seller shall pay Construction Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any

Construction Delay Damages. Seller agrees that Buyer may draw any Construction Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due. Prior to the expiration of the Construction Delay Cure Period, so long as Seller has paid Construction Delay Damages to Buyer in accordance with this Section 3.1(c), Seller's failure to achieve Construction Start on or before the applicable Construction Start Deadline shall not be deemed a Seller's Event of Default. If Seller achieves the Initial Delivery Date on the applicable Expected Initial Delivery Date, any Construction Delay Damages paid by Seller for the applicable Construction Start Deadline shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after the applicable Initial Delivery Date.

3.2 **Interconnection.** Seller shall (a) cause the execution all necessary Interconnection Agreements for the Projects in the Portfolio, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of the Product, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service including any Governmental Approvals required for the foregoing. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company's applicable tariffs, the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver the Product to Buyer.

3.3 **Metering.** At Seller's expense, Seller shall obtain and maintain one or more CAISO resource IDs dedicated exclusively to the Portfolio and shall install, or cause to be installed, all necessary metering and telemetry required by the CAISO to deliver the Product. CAISO-required meters shall be owned, maintained and operated by Seller at Seller's sole cost and expense. In addition, Seller shall install, and shall maintain throughout the Delivery Term unless Buyer exercises its Product Transition rights under Section 5.2, a revenue grade meter capable of measuring and demonstrating on a monthly basis the sufficiency of the Load Modification Delivered Quantities.

3.4 **Progress Reports.** Within fifteen (15) days after the close of every other calendar month, starting with the first calendar month following the Execution Date and until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report in a Notice and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonable requested documentation, subject to the confidentiality restrictions set forth in this Agreement, directly related to the achievement of Critical Milestones within ten (10) Business Days of receipt of such request by Seller.

3.5 **March 2021 and March 2022 Elections.**

(a) No later than March 1, 2021,

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Contract Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Contract Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment

Contract Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Contract Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Contract Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5).

(iii) Buyer at its option may elect to change the accounting for the Load Modification Contract Amount from a kW-Month capacity construct to a kWh energy construct so long as no changes to the Seller's compensation and revenue hereunder results from such change.

(b) No later than March 1, 2022,

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Contract Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Contract Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment Contract Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Contract Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Contract Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5).

3.6 **Remedial Action Plans.** If Seller anticipates that it will not be able to timely satisfy any Milestone set forth on the Cover Sheet, except as the result of Force Majeure or a Buyer Event of Default, Seller shall submit to Buyer no later than thirty (30) days prior to the relevant deadline a remedial action plan ("**Remedial Action Plan**"), which will describe in detail the actual delay, any anticipated delay beyond the scheduled deadline, the cause of the delay, and Seller's proposed course of action to achieve the missed deadline, any subsequent Milestones, and the Initial Delivery Date by the Expected Initial Delivery Date. Delivery of a Remedial Action Plan shall not relieve Seller of any obligation under this Agreement.

Article 4: INITIAL DELIVERY DATES

4.1 Timing of the Initial Delivery Dates.

(a) **Initial Delivery Dates.** Seller shall cause the Initial Delivery Date to occur on, and not prior to, the applicable Expected Initial Delivery Date.

(b) Failure to Meet Expected Initial Delivery Date.

(i) Seller shall provide Buyer with advance Notice of any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, including a true and reasonably detailed explanation of the cause of such delay ("**Delay Notice**"), at least ninety (90) days in advance of the Expected Initial Delivery Date (or, if Seller's anticipation of such delay does not arise until after such advance window, then as soon as reasonably possible following such

anticipation arising). For each day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, for a period beyond the Expected Initial Delivery Date lasting no more than one hundred eighty (180) days ("**IDD Cure Period**"), Seller shall pay IDD Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any IDD Delay Damages. Buyer may draw any IDD Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due.

(ii) Prior to the expiration of the IDD Cure Period, so long as Seller has provided the Delay Notice to Buyer and paid IDD Delay Damages to Buyer in accordance with this Section 4.1(b), Seller's failure to achieve the Initial Delivery Date on the Expected Initial Delivery Date shall not be deemed a Seller's Event of Default. Upon (A) Seller's failure to provide a Delay Notice to Buyer in accordance with this Section 4.1(b), (B) Seller's failure to pay IDD Delay Damages in accordance with this Section 4.1(b), or (C) Seller's failure to achieve the Initial Delivery Date prior to the expiration of the IDD Cure Period, in each case for any reason other than a Force Majeure extension or a Buyer Event of Default, Seller will be deemed a Defaulting Party pursuant to Section 7.1(a)(v).

(iii) Upon the expiration of the IDD Cure Period, if Seller has failed to achieve the Initial Delivery Date with respect to the entire Portfolio but is capable of achieving the Initial Delivery Date with respect to Projects of the Portfolio which could provide no less than [REDACTED] of the Contract Amount, then Buyer shall have the right, in lieu of terminating this Agreement based on such event of default, to reduce the Contract Amount accordingly and allow Seller to declare the Initial Delivery Date based on such reductions, in exchange for Seller's one-time payment to Buyer of [REDACTED] per __kW__ of such reductions.

4.2 **Conditions Precedent to the Initial Delivery Date.** The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the "**Conditions Precedent**") and must be satisfied by Seller, to Buyer's reasonable satisfaction, at least seventy-five (75) days before the Initial Delivery Date, unless a different deadline is expressly set forth below, in which case such other deadline shall govern:

(a) reserved

(b) Thirty days (30) before IDD the seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Portfolio and to enable Seller to deliver the Product to Buyer at the Contract Amounts.

(c) reserved

(d) Seller shall have executed a Customer Agreement with each Customer whose Project is to be a part of the Portfolio as necessary for the safe and lawful operation of the Portfolio and to enable Seller to deliver the Product to Buyer in the Contract Amounts, and such Customer Agreements shall remain valid and in full force and effect.

(e) Thirty days (30) before IDD the seller shall have constructed or caused to be constructed the Projects that are to be part of the Portfolio as of the Initial Delivery Date in accordance with this Agreement to enable Seller to satisfy the obligations of the Seller herein, including the provision of the Product in the Contract Amounts from the Portfolio.

(f) Thirty days (30) before IDD the seller shall have provided to Buyer a certification of Seller, substantially in the form attached hereto as Appendix IV, demonstrating (i) satisfactory installation, completion and commissioning of the Project(s) at the Site(s) that are comprising the Portfolio as set forth in Seller's Initial Portfolio List and (ii) that the Project(s) comprising the Portfolio as set forth in Seller's Initial Portfolio List, can deliver, in aggregate, the Product in the applicable Contract Amounts.

(g) Thirty days (30) before IDD the seller shall have executed and complied with any necessary Interconnection Agreement(s) and installed any necessary metering to deliver Product to Buyer in the Contract Amounts, in each case in accordance with the CAISO Tariff and any applicable tariffs of the Utility Distribution Company and the Participating Transmission Owner.

(h) Seller shall have submitted to Buyer a Project Safety Plan.

(i) Seller shall have provided Buyer with (A) Seller's Portfolio List in accordance with Section 5.4(d) that demonstrates Projects and Customers under executed Customer Agreements with Seller sufficient for Seller to deliver, in aggregate, Product in the Contract Amounts ("**Seller's Initial Portfolio List**"), and (B) a description of the Portfolio and Projects set forth in Appendix I. If Seller provides to Buyer Seller's Initial Portfolio List, but prior to the occurrence of the Initial Delivery Date Seller changes Seller's Initial Portfolio List, then this Condition Precedent shall not be satisfied and the date on which Seller provides to Buyer a changed Seller's Portfolio List in accordance with this Agreement shall constitute provision of Seller's Initial Portfolio List for purposes of this Condition Precedent.

(j) Seller shall have provided to Buyer an attestation, in the form attached hereto as Appendix VII, that Seller is following all of the rules set forth in CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities (the "**MUA Decision**").

(k) Thirty days (30) before IDD the seller shall have delivered to Buyer all insurance documents required under Article 16.

(l) By the occurrence of the IDD Seller shall have provided Delivery Term Security to Buyer as required by Section 10.2.

(m) By the occurrence of the IDD Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages

(n) No Event of Default on the part of Seller shall have occurred and be continuing and no Remediation Event shall have occurred and remain unresolved.

(o) Seller shall have satisfied the following conditions specific to Load Modifying Resources:

(i) No later than the Dispatch Plan Deadline, Seller shall have delivered to Buyer a Load Modifying Resource Dispatch Plan for the first year of the Delivery Term.

4.3 **Cooperation in Connection with Initial Delivery Date.** The Parties agree that, in order for Seller to achieve the Initial Delivery Date, the Parties may have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date. The Parties shall cooperate with each other on marketing activities as outlined in the Go to Market Plan to assist the Seller in obtaining Customers. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Contract Amounts of Product beginning on the applicable Initial Delivery Date.

4.4 **Confirmation of Initial Delivery Dates.** Once each of the Conditions Precedent has been satisfied by Seller (other than any Condition Precedent that may only be satisfied as of the Initial Delivery Date), Seller shall certify such satisfaction to Buyer in a Notice confirming the anticipated occurrence of the applicable Initial Delivery Date. Buyer shall Notify Seller of any disagreement that Seller has satisfied such Conditions Precedent (with reasonable detail in regard to each Condition Precedent) within fifteen (15) Business Days of Seller's Notice. No later than seven (7) Business Days following the applicable Initial Delivery Date, Buyer shall provide a Notice to Seller confirming the occurrence of the applicable Initial Delivery Date.

Article 5: TRANSACTION

5.1 **Product.**

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver exclusively to Buyer, all Load Modification or, upon a Product Transition pursuant to Section 5.2(b), all Capacity Attributes, in each case that may be calculated or derived from the Operational Characteristics, which must be exclusively from the Portfolio (collectively, the "**Product**"), pursuant to the terms and conditions contained herein. Operational Characteristics shall not be modified during the Term.

(b) Buyer shall have the right to re-sell all or a portion of the Product purchased under this Agreement ("**Resold Product**").

5.2 **Purchase and Sale Obligation.**

(a) **Initial Product.** During the Delivery Term, unless and until a Product Transition occurs under Section 5.2(b), Seller shall deliver to Buyer all Load Modification, including in the Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Section 5.2(c).

(b) **Product Transition.** At any time during the Delivery Term, but only upon the occurrence of a Product Transition Trigger, Buyer may, by no less than 75 days written notice to Seller, elect to receive Capacity Attributes rather than Load Modification from the Portfolio (the "**Product Transition**"). Upon receipt of a Product Transition notice from Buyer, and as a condition to Buyer's obligation to take and pay for Capacity Attributes for the remainder of the Delivery Term, Seller shall within sixty (60) days satisfy the Capacity Attribute Conditions set forth in Part One of Appendix XI, with the allowance of an additional thirty (30) days to satisfy the Capacity Attribute Conditions, for a total of ninety (90) days, if required, based on commercially reasonable efforts undertaken by Seller. Commencing on the first day of the First Showing Month after Seller's satisfaction of the Capacity Attribute Conditions, and for each day of each Showing Month during the remainder of the Delivery Term, Seller shall deliver to Buyer

and Buyer shall pay for all Capacity Attributes of Product, including in the Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Part Two of Appendix XII. Upon a Product Transition, and for remainder of the Delivery Term the Product shall be Capacity Attributes and not Load Modification and Seller shall have no further obligation to provide, or to comply with any provision of this Agreement that is limited to, Load Modification. When the Product Transition occurs, Seller will update the table in Appendix XIV with the new expected value streams and capacity nominations for each Project in the Portfolio. Seller will calculate the contract price for the new Capacity Attributes to account for any economic losses, or gains, to Seller or Seller's Customers. For clarity, the Product Transition may occur a maximum of one (1) time during the Delivery Term.

(c) Payment. The provisions of this Section 5.2(c) shall apply unless a Product Transition Occurs, in which case the provisions of Part Two of Appendix XII shall become effective and replace this Section 5.2(c).

(i) Each monthly invoice prepared by Seller pursuant to Article 9 shall include meter data substantiating the quantity of Load Modification, in kW-months, delivered to Buyer from the Portfolio consistent with the Load Modifying Resource Dispatch Plan for the applicable month (the "**Delivered Quantities**").

(ii) For all Load Modification that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 9, pay Seller a monthly payment ("Monthly Payment" or "MP") as follows:

$$MP = DQ \times CP$$

where,

DQ = The Delivered Quantities;

CP = The contract price set forth on the Cover Sheet ("Contract Price").

(iii) For clarity, Buyer has no obligation to pay Seller for Load Modification that is delivered outside the parameters of the applicable Load Modifying Resource Dispatch Plan.

5.3 **Allocation of CAISO Payments and Costs.**

(a) Except as may otherwise be provided in this Agreement, 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 Product or Portfolio.

(b) To the extent that the Portfolio is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments of the CAISO Tariff, 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.

5.4 **Customers.**

(a) **Seller Obligation to Obtain Customers.** Seller shall obtain or cause to be obtained the Customers necessary to enable the safe and reliable delivery of Product in the Contract Amounts to Buyer during the Delivery Term. Seller shall enter into a Customer Agreement with each such Customer, complete all necessary registration forms regarding such Customers, submit any necessary documentation regarding such Customers and comply with all other requirements of the Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority. In connection with but without limiting the foregoing, Seller shall at all times comply with the Go to Market Plan.

(b) **Customers Eligible for Inclusion in Portfolio.** Product provided to Buyer must come exclusively from Projects installed at Sites listed in Seller's Portfolio List in accordance with Section 5.4(d). Unless a Product Transition has occurred, Customers must meet the definition of a "Customer" during and throughout the Delivery Term in order to be included in Seller's Portfolio List.

(c) **Seller's Portfolio.** Seller shall cause Seller's Portfolio at all times during the Delivery Term to deliver at least twenty percent (20%) of the Contract Amount from assets associated with single-family residential Customer accounts and at least twenty percent (20%) of the Contract Amount from assets associated with DAC, Low Income Customer, CARE/FERA or Medical Baseline Program multi-family residential Customer accounts.

(d) **Seller's Portfolio List.** As of the date first submitted in accordance with Section 4.2 and throughout the Delivery Term, Seller shall maintain a list of Customers in Seller's Portfolio in the form and containing the information set forth in the **Seller's Portfolio List** in Appendix III ("**Progress Reporting Form**"). If any of the material Customer information in Seller's Portfolio List materially changes during the Delivery Term, such change shall be deemed a Portfolio Modification pursuant with Section 5.4(e) and upon completion of such Portfolio Modification, Seller shall submit to Buyer an updated Seller's Portfolio List reflecting all changes since the previous Seller's Portfolio List. In addition, Seller shall provide any additional Customer information reasonably requested by Buyer in connection with this Agreement.

(e) **Portfolio Modification.** The Parties agree and acknowledge that Seller may add or remove a Customer from Seller's Portfolio (a "**Portfolio Modification**") at any time during the Delivery Term, subject to the requirements of this Section 5.4 and Article 11, and provided that Seller shall Notify Buyer of any proposed Portfolio Modification within thirty (30) days of its occurrence. A Portfolio Modification may not alter (i) the Portfolio from the Portfolio description set forth in Appendix I as of the Execution Date, (ii) the Operational Characteristics, or (iii) the Portfolio's ability to deliver Product in the Contract Amounts throughout the Delivery Term. Within sixty (60) days of a Portfolio Modification, Seller shall provide Buyer a signed Portfolio Modification certification in the form set forth in Appendix IX. A Portfolio Modification will not alter nor relieve any of Seller's obligations under this Agreement.

(f) **Dual Participation.** Seller may include in Seller's Portfolio those Customers that are registered in programs or resources administered by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority ("**Other**

Programs”), provided that (i) participation of Customers in both Seller’s Portfolio and Other Programs does not impair (in whole or in part) Seller’s ability to perform its obligations under this Agreement (including Section 14.4) and (ii) Seller complies with all rules and requirements of Other Programs set forth by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority. For the avoidance of doubt, a failure by Seller or a Customer to achieve participation in Other Programs shall not in any way limit or excuse Seller’s obligations to Buyer under this Agreement.

(g) **Seller’s Relationship with Customer.** The terms and conditions of the Customer Agreements governing the relationship between Seller and a Customer with respect to such Customer’s participation in Seller’s Portfolio are independent of Buyer, and Buyer shall have no responsibility with respect to such Customers for purposes of Seller’s Portfolio. Seller shall independently resolve any disputes arising between Seller and any Customer.

Article 6: OPERATIONS

6.1 **Operations.** Seller shall at all times retain operational control of the Portfolio and be responsible for operation and maintenance of the Portfolio, and Buyer shall have no liability for the failure of Seller, any Customer, or any Project owner or operator to comply with any applicable Law, Requirements, or other requirement of the Transmission Provider or Utility Distribution Company, including any penalties, charges or fines imposed for such noncompliance.

(a) **Islanding:** Projects have the capability to provide back-up power to Customers in the event of a power outage on the distribution system.

6.2 **Charging Energy.** As between Buyer and Seller, Buyer shall not be responsible for procuring and delivering Charging Energy to the Portfolio or paying costs associated with Charging Energy.

6.3 **Standard of Care.** In performing all of its obligations under this Agreement, including in its scheduling, interconnection, operation, and maintenance of the Portfolio, Seller shall comply with all Requirements and Safety Requirements.

6.4 Buyer’s Use and Certification of Product.

(a) During the Term, Seller shall take all actions, including executing all documents or instruments, complying with all applicable registration, certification and reporting requirements of all applicable Governmental Authorities and other Persons, as such requirements may be amended from time to time, that are necessary to ensure that Buyer can use Product (including, solely in the event of a Product Transition, enabling Buyer to apply Product towards Buyer’s Compliance Obligations), or sell Resold Product, at all times during the Delivery Term. Promptly following Buyer’s written request, Seller agrees to take all actions and execute or provide any documents, information, or instruments with respect to Product reasonably necessary to enable Buyer to comply with the requirements of any Governmental Authority.

(b) During the Delivery Term, Seller shall, at no cost to Buyer, obtain and maintain CAISO and all applicable Governmental Authority certification(s) for all elements of the Product for which certification is or may become required in order to enable Buyer to receive and

use such Product (including, solely in the event of a Product Transition, use of such Product to satisfy its Compliance Obligations). If Buyer is required under applicable Law to obtain such certification, Seller shall take all actions within its control to ensure that Buyer is able to secure such certification. Seller, at no cost to Buyer, shall take all other actions during the Delivery Term, including submission of all reports and other filings with CAISO and applicable Governmental Authorities, that are required to be taken by Seller to ensure that Buyer can receive the Product and shall take all actions within its control to assist Buyer in taking actions required to be taken by Buyer with regard to receipt of Product.

6.5 **Dispatch**. The provisions of this Section 6.5 shall apply unless a Product Transition Occurs, in which case the provisions of Part Three of Appendix XII (“Scheduling”) shall become effective and replace this Section 6.5.

(a) For each year of the Delivery Term, Seller shall submit to Buyer a Load Modifying Resource Dispatch Plan on or before the Dispatch Plan Deadline.

(b) No less than 15 days before the Dispatch Plan Deadline, the Parties shall meet to discuss the Load Modifying Resource Dispatch Plan for the coming year.

(c) Buyer may require seller to modify Dispatch Plan to maximize Load Modification for Buyer outside of Customers’ TOU periods upon mutual agreement of an equitable adjustment to the Contract Price to reflect the demonstrable economic loss to Seller or Seller’s Customers.

(d) At all times during the Delivery Term, Seller shall operate the Portfolio to provide the Contract Amounts of Load Modification as specified in the applicable Load Modifying Resource Dispatch Plan.

6.6 **Information Sharing and Shared Learning**. Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer’s portfolio of assets to meet its customers’ needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data at least on an aggregated basis but excluding cost or similar proprietary information, upon Buyer’s request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. Except with respect to services, attributes, or products delivered to Customers pursuant to Customer Agreements or products or services related to Renewable Energy Credits (which shall not require any Notice to Buyer), for information related to Seller’s multiple uses of the Portfolio, Seller shall promptly provide Notice to Buyer any time it provides any services, attributes, or products from the Portfolio to a third party.

6.7 **Changes in Law**.

(a)

(i) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in a decrease to the amount of Product that may be calculated or derived from the Operational Characteristics (including any extension by the CEC, CPUC or CAISO of the required duration of energy storage resources for Load Modification or, after a Product Transition, Resource Adequacy), Seller shall exercise commercially reasonable efforts to maintain the Contract Amounts. If despite such efforts Seller is unable to maintain the Contract Amounts as a result of such change in requirements, then either Party may provide Notice to the other Party, once it is reasonably evident that the Contract Amounts cannot be maintained, specifying the altered amounts of Product (“**Downward Change Notice**”). Following a Downward Change Notice, Buyer will confirm via Notice to Seller the amended Contract Amounts based on such change and the date that Seller shall commence delivery of such amended amounts (“**Downward Change Confirmation Notice**”).

(ii) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in an increase to the amount of Product that may be calculated or derived from the Operational Characteristics (including in the case of a new category of Load Modification or after a Product Transition, Capacity Attributes), then either Party shall provide Notice to the other Party as soon as practicable following knowledge of such change specifying the altered amounts of Product (“**Upward Change Notice**”). Following any Upward Change Notice, Buyer shall have sole discretion over whether to accept a corresponding increase to any Contract Amount. If the Seller increases its product delivery up to [REDACTED]

[REDACTED] If Buyer chooses to accept such increase, Buyer will confirm via Notice to Seller the amended Contract Amounts based on such change and the date that Seller shall commence delivery of such amended amounts (“**Upward Change Confirmation Notice**”). If Buyer declines to accept any such increase, Seller shall have the right to sell to third parties any resulting Product that is in excess of the Contract Amounts.

(iii) The Contract Amounts shall automatically adjust upon the date set forth in the Confirmation Notice without further need for the Parties to amend this Agreement. Until such date, Seller shall continue to deliver the Contract Amounts of Product as stated prior to the Confirmation Notice, unless otherwise required by Law or other Requirements.

(b) If a change in CAISO, CEC or CPUC Requirements renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 19.2. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or

constitute, or form the basis of, a Force Majeure, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

(c) Without limitation or modification of Section 6.7(a) or Section 6.7(c), in the event of any change in Requirements by the CPUC, CEC, CAISO, or other Governmental Authority or Person that significantly modifies the market mechanisms or regulatory construct for delivery of Load Modification or (after a Product Transition) Capacity Attributes from resources similar to and including the Portfolio (but that does not fall under Section 6.7(c)), either Party may provide Notice to the other Party requesting that the Parties discuss in good faith changes to this Agreement that would enable each Party to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith for a period of at least sixty (60) days but shall have no further obligation or rights under this Section 6.7(d).

Article 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a “**Seller’s Event of Default**”):

(i) Seller fails to satisfy a Performance Assurance requirement set forth in Article 10 and Seller fails to provide replacement Performance Assurance within ten (10) Business Days of Buyer’s written demand therefor in accordance with Article 10;

(ii) any material misrepresentation or omission, in any metering or submetering, Load Modifying Resource Dispatch Plan, Supply Plan, Seller’s Portfolio List, report, or Notice with regard to delivery of the Product, or undue delay or withholding of such data, report or Notice, which misrepresentation or undue delay or withholding is not cured within ten (10) Business Days of Buyer’s receipt thereof;

(iii) Seller intentionally or knowingly delivers, or attempts to deliver Product that is not produced by the Portfolio;

(iv) Seller fails to achieve Construction Start by the applicable Construction Start Deadline for reasons other than Force Majeure, subject to Section 3.1(c);

(v) Seller fails (A) to deliver a Delay Notice in accordance with Section 4.1(b)(i) or (B) to achieve an Initial Delivery Date by the applicable Expected Initial Delivery Date for reasons other than Force Majeure, subject to Section 4.1(b)(ii);

(vi) Seller fails in any month to deliver Delivered Quantities to Buyer equal to the Contract Amounts (unless Buyer has received Shortfall LDs in lieu of Delivered Quantities); provided that Shortfall LDs may not be used to avoid a Seller’s Event of Default (A) during the months of August and September (unless a Product Transition has occurred) or (B) more than three (3) times in any twelve (12) month period during the Delivery Term; or

(vii) In any year in the Delivery Term, aggregate Delivered Quantities are less than eighty five percent (85%) of the Contract Amounts for such period.

(a) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a “**Party’s Event of Default**”):”

(viii) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ix) any representation or warranty made by such Party under this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(x) the failure by such Party to perform any material covenant or obligation set forth in this Agreement, including any failure by Seller to comply with all Requirements and Safety Requirements in accordance with Section 6.3, except to the extent constituting a separate Event of Default, and such failure is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(xi) such Party becomes Bankrupt;

(xii) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 18; or

(xiii) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

7.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, in the case of an Event of Default by Seller occurring

before the Initial Delivery Date, including an Event of Default under Section 7.1(a)(v), or (ii) the Termination Payment calculated in accordance with Section 7.3 below, in the case of any other Event of Default by either Party;

- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except where an express and exclusive remedy or measure of damages is provided under this Agreement;
- (f) provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

7.3 Termination Payment. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party, as of the Early Termination Date, netted into a single amount; *provided*, that if the Termination Payment amount would be a negative number based upon the foregoing clause, the Termination Payment shall be deemed to be zero dollars (\$0.00). The Non-Defaulting Party shall calculate a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

7.4 Notice of Payment of Termination Payment. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

7.5 **Disputes with Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 19.

7.6 **Rights and Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 7 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

Article 8: FORCE MAJEURE

8.1 Force Majeure.

(a) **Effect of Force Majeure.** A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party's failure or delay of performance. The burden of proof for establishing the existence and consequences of an event of Force Majeure lies with the Party initiating the claim.

(b) **Notice of Force Majeure.** The Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide prompt Notice to the other Party in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) days after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure.

(c) **Mitigation of Force Majeure.** The suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Expected Initial Delivery Date as a result of a Force Majeure event declared by Seller in accordance with this Agreement, then Seller shall work diligently to resolve the effect of the Force Majeure and provide evidence of its efforts promptly upon Buyer's written request.

(d) **Force Majeure Failure.** Subject to Section 8.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a "**Force Majeure Failure**":

(i) if during the Delivery Term:

(A) due to a Force Majeure event, Seller is unable to meet its obligations under this Agreement (including any failure to deliver Delivered Quantities to Buyer equal to the Contract Amounts) for a period greater than one hundred eighty (180) days; or

(B) the Portfolio is destroyed or rendered inoperable by an event of Force Majeure.

(ii) if Seller is unable, due solely to a Force Majeure event, to achieve an Initial Delivery Date by one hundred eighty (180) days after the applicable Expected Initial Delivery Date.

(e) **Effect of Termination for Force Majeure Failure.** If Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(d), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 21.3.

Article 9: INVOICING AND PAYMENT

9.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice, in arrears, to Buyer no sooner than ten (10) Business Days after the end of each month of the Delivery Term for all amounts due from Buyer to Seller under this Agreement, including, as applicable: (a) the Monthly Payment, and (b) other compensatory adjustments required by this Agreement, including adjustments for Taxes. Each invoice shall (i) contain data sufficient to document and verify all amounts included therein, including any relevant records, invoices, or settlement data from CAISO, necessary to verify the accuracy of any amount and (ii) be in a format specified by Buyer.

9.2 **Payment.** Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within forty-five (45) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the three-month LIBOR, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.4 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in

full, in accordance with Section 9.2, accruing from the date on which the adjusted amount should have been due.

9.4 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date of the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. 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 five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 9.3. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.4 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

9.5 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Article 10: PERFORMANCE ASSURANCE

10.1 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) Business Days of the Execution Date. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Upon the earlier of (a) Seller's delivery of the Delivery Term Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Initial Delivery Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

10.2 Seller's Delivery Term Security. To secure its obligations under this Agreement, Seller shall deliver Delivery Term Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Delivery Term Security in full force and effect, and shall within five (5) Business Days after any draws made by Buyer in accordance with this Agreement (other than to satisfy a Termination Payment) replenish the Delivery Term Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Delivery Term Security. If the Delivery Term Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Delivery Term Security.

10.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Delivery Term Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 10.1 and 10.2 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of a Seller's Event of Default or a Party's Event of Default on the part of Seller, an Early Termination Date resulting from a Seller's Event of Default or a Party's Event of Default on the part of Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Delivery Term Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 10.3):

(i) Exercise any of its rights and remedies with respect to the Development Security and Delivery Term Security, including any such rights and remedies under Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Delivery Term Security; and

(iii) Liquidate all Development Security or Delivery Term Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

(b) Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

10.4 **Seller Financial Information.** If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. Notwithstanding anything else herein to the contrary, to the extent Seller is a publicly traded corporation on a nationally recognized stock exchange, the obligation to deliver financial statements pursuant to Section 10.4 herein shall be waived.

Article 11: SAFETY

11.1 Safety.

(a) Seller shall, and shall cause its Affiliates and Contractors to, design, construct, operate, and maintain the Portfolio and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and Contractors to, take all actions to comply with the Safety Requirements.

(b) Prior to Seller's execution of a Contractor's contract, Seller shall demonstrate to Buyer that the Contractor has the qualifications, experience, and safety record to develop, construct, operate and maintain the Portfolio, as applicable. During the period that a Contractor is conducting Work, Seller shall cause the Contractor to meet and comply with the Safety Requirements.

(c) Seller shall document a Project Safety Plan and incorporate the Project Safety Plan's features into the design, development, construction, operation, and maintenance of the Portfolio. Seller shall submit for Buyer's review a Project Safety Plan, in a format acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements and (B) Seller's consideration of the Project Safety Plan items in Part Two (Portfolio Design and Description) of Appendix VI. Upon Notice to Buyer, Seller may deviate from any specific procedures identified in the Project Safety Plan while designing, developing, constructing, operating, or maintaining the Portfolio, if in Seller's judgment, the deviation is necessary to design, develop, construct, operate, or maintain the Portfolio safely or in accordance with the Safety Requirements.

(d) Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Project Safety Plan to Buyer within thirty (30) days of any such updates. Throughout the Delivery Term, Buyer shall have the right to request Seller to

provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

(e) Seller shall remove any Contractor that engages in repeated, material violations of the Project Safety Plan or Safety Requirements, unless doing so would present an ongoing material adverse effect to the operation of the Portfolio.

11.2 **Reporting Serious Incidents.** Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the Contractor or Customer(s) involved in the incident (as applicable), the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance, and cause each of its Contractors and Customer(s) to cooperate and provide reasonable assistance, to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

11.3 **Remediation.**

(a) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) Business Days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer's review.

(b) Seller shall cooperate, and cause each of its Contractors to cooperate, with Buyer in order for Seller to provide any report relating to a Remediation Event, in a form and level of detail that is acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as requested by Buyer.

Article 12: TAXES

12.1 **Taxes.** Seller shall pay or cause to be paid all Taxes (a) on or with respect to the Portfolio and (b) on or with respect to the sale and making available of Product to Buyer that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Execution Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

12.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any

financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party.

Article 13: LIMITATIONS

13.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 15 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

13.2 **Waiver and Exclusion of Other Damages.**

(a) EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

(b) FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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.

(c) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.1(d), 4.1(c), 7.1(a)(vi), 7.2 AND 7.3, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

(d) THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

Article 14: REPRESENTATIONS; WARRANTIES; COVENANTS

14.1 **Seller's Representations and Warranties.** As of the Execution Date, Seller represents and warrants as follows:

(a) Seller is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller (evidence of such due authorization Seller shall provide to Buyer if requested) and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Portfolio is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Portfolio and Seller will be the applicant on any California Environmental Quality Act documents.

(g) Seller is familiar with conflict of interest Laws, including the California Political Reform Act, and Buyer's board policies governing conflicts of interest; Seller is in compliance with such Laws and board policies and does not know of any facts that would violate such Laws and board policies; Seller and its officers and agents have not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value to any employee, director, officer of Buyer or governmental official in Alameda County, California for the purpose of influencing any act or decision of such employee, director, officer or government official in her official capacity; no officer or agent of Seller (i) is a government official in Alameda County, California or a family member of a government official in Alameda County, California or (ii) has a personal, business, or other relationship or association with any government official in Alameda County, California or family member thereof who may have responsibility for or oversight of any activities of Buyer; Seller does not employ any government official in Alameda County, California or family member thereof.

(h) Seller will be responsible for ensuring all Projects in the Portfolio maintain compliance with the dual participation requirements of Section 5.4(f).

14.2 **Buyer's Representations and Warranties**. As of the Execution Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

14.3 **General Covenants.** Each Party covenants that commencing on the Execution Date and continuing throughout the Term it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition.

14.4 **Covenants of Seller.** Seller covenants to and for the benefit of Buyer that throughout the Delivery Term (unless another time period is specified):

(a) Seller will (i) acquire and maintain all Governmental Approvals necessary for the construction, operation, and maintenance of the Portfolio consistent with Safety Requirements, including any approvals required under the California Environmental Quality Act, (ii) Notify Buyer of any material modifications or lapse in renewal of Governmental Approvals, and (iii) at Buyer's request, provide to Buyer digital copies of any Governmental Approvals.

(b) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

(c) Seller will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Portfolio in order to satisfy its Compliance Obligations.

(d) Seller shall operate the Portfolio during the Delivery Term in accordance with Appendices I and II and Safety Requirements.

(e) Seller shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to energy storage facilities.

(f) Seller shall follow all the rules set forth in Exhibit A of the MUA Decision.

14.5 **Prevailing Wage.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing

wage laws. In addition, Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 14.5 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

Article 15: INDEMNITIES

15.1 **Indemnity by Seller.**

(a) Seller shall defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, employees, and representatives (“**Buyer Group**”) from and against all third party or Customer claims arising out of this Agreement, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, however described (collectively, “**Claims**”), which arise out of or relate to or are in any way connected with (i) Seller’s delivery of the Product to Buyer, (ii) Seller’s or its Affiliates’ ownership, development, construction, operation or maintenance of the Portfolio, including the Project(s) and the Site(s); (iii) Seller’s or its Affiliates’ actions or inactions, including Seller’s breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Portfolio, the Project(s), Seller’s Portfolio, Customer(s), or Site (including any Claims relating to a Shortfall); (iv) any environmental matters associated with the Portfolio, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement; (v) any agreement between Seller or its Affiliates and a third party including any Customer Agreement; (vi) the participation of Customers in the Portfolio (or the solicitation thereof); or (vii) Seller’s or its Affiliates’ violation of any applicable Law, Requirements, or other requirements of Transmission Provider, Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller’s Affiliates, Customers, or others, excepting only such losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group (collectively, “**Indemnifiable Losses**”).

(b) Seller shall defend, indemnify and hold harmless the Buyer Group harmless from and against all Claims incurred by or brought against Buyer in connection with Environmental Costs.

15.2 **Notice of Claim.**

(a) **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 15, Buyer will promptly Notify Seller in writing of any Claim which Buyer has determined has given or could give rise to an Indemnifiable Loss under Section 15.1. The Notice is referred

to as a “**Notice of Claim**.” A Notice of Claim will specify, in reasonable detail, the facts known to Buyer regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 15.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Seller is not obligated to indemnify Buyer for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.3 **Defense of Claims**. If, within ten (10) days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 15.2(b), Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim as provided in the last sentence of Section 15.2(b), Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof; provided, however, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be liable for all costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder; provided, however, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Buyer up to the date of such Notice.

15.4 **Subrogation of Rights**. Upon making any indemnity payment, Seller will, to the extent of such indemnity payment, be subrogated to all rights of the Buyer against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) Seller is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until Buyer recovers full payment of its Indemnifiable Loss, any and all claims of the Seller against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Buyer’s rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

15.5 **Rights and Remedies are Cumulative.** The rights and remedies of a Party pursuant to this Article 15 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement, except with respect to any expressly exclusive remedies herein.

Article 16: INSURANCE

16.1 **Insurance.** Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its Contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 16.1 constitute a material obligation of this Agreement.

(a) **Workers' Compensation and Employers' Liability.**

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(b) **Commercial General Liability.**

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional named insured.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED].

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) **Business Auto.**

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement."

(d) **Construction All-Risk Insurance.** During the construction of the Portfolio prior to the Stage 2 Commercial Operation Date, construction all-risk form property insurance covering the Portfolio and naming Seller (and Lender if any) as the loss payee.

(e) **Contractor's Pollution Liability.**

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured.

16.2 **Evidence of Insurance.** Within ten (10) days after the Execution Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, reduction, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

16.3 **Failure to Comply.** If Seller fails to comply with any of the provisions of this Article 16, Buyer may, but is not obligated, to purchase the insurance coverage required under Section 16.1 and set off the cost thereof from any amounts owed by Buyer to Seller under this Agreement.

Article 17: RECORDS AND AUDIT RIGHTS

17.1 **Operations Logs.** Seller shall maintain a complete and accurate log of all material operations. Such log will include, but not be limited to, information, to be measured on an hourly basis and relayed to SVCE on a monthly basis, on charging, discharging, availability, maintenance performed, outages, electrical characteristics of the energy storage systems and similar information relating to the availability, testing and operation of the Portfolio. Seller shall provide this information electronically to Buyer on a monthly basis. At the request of Buyer or any Governmental Authority having jurisdiction over any of the Requirements, Seller shall provide all records demonstrating that the Portfolio is operated and maintained in accordance with Requirements.

17.2 **Records and Audit.**

(a) Seller shall provide access to such financial records and personnel required by Buyer in order to facilitate Buyer's compliance with applicable Law and Generally Accepted Accounting Principles.

(b) To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Seller will make all records available to Buyer at its principal place of business during normal working hours.

17.3 **General Audit Right.** Buyer has the right during normal working hours, and after reasonable Notice, to examine Seller's records to the extent reasonably necessary to verify (a) Seller's compliance with this Agreement (including Section 14.4), (b) the accuracy of any statement including the Project Safety Plan or other documents that supplement this Agreement, and (c) any charge, or computation made pursuant to this Agreement. If such examination reveals any material inaccuracy, necessary adjustments shall be made promptly.

17.4 **State Auditor.** In accordance with Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement if the compensation under this Agreement exceeds [REDACTED].

17.5 **Data Request Cooperation.** Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities or Public Records Act requests that are related to or associated with the Portfolio, delivery of Product or this Agreement, subject to the requirements of Article 20.

17.6 **Access Rights.** With respect to multifamily Projects only, Seller agrees, and shall cause each multifamily Customer to agree, to allow Buyer, the Utility Distribution Company, the Commission, and/or the CEC, and the authorized representatives of such entities, reasonable access to Seller's and the Customers' facilities to conduct measurement and evaluation activities related to this Agreement.

Article 18: ASSIGNMENT

18.1 **General Prohibition on Assignments.** Except as provided below, neither Party may directly or indirectly assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Seller Change of Control or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld.

18.2 **Collateral Assignment.**

(a) Subject to the provisions of this Section 18.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Portfolio.

(b) In connection with any collateral assignment of this Agreement for purposes of the financing or refinancing of the Portfolio by Seller, Buyer agrees to work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral**

Assignment Agreement”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender.

18.3 **Assignment to Seller Affiliate.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer’s Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller, provided that such assignment shall not release Seller from its obligations under this Agreement unless such Affiliate has financial strength and technical capabilities equal to or greater than that of Seller.

18.4 **Unauthorized Assignment; Costs.**

(a) Any assignment or purported assignment in violation of this Article 18 is void.

(b) No assignment of this Agreement shall be effective unless such assignment is memorialized in a written agreement signed by the assignee and, except in connection with a collateral financing, in which agreement the assignee assumes all of the assignor’s obligations and liabilities under this Agreement.

(c) Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys’ fees.

Article 19: DISPUTE RESOLUTION

19.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States Northern District of California, or the courts of the State of California sitting in the County of Alameda, California.

19.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, 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 the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If

the mediation is unsuccessful, 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 Agreement. To the fullest extent permitted under applicable Law, any statute of limitations applicable to a dispute that is mediated by the Parties pursuant to this Agreement shall toll during any period in which such dispute is being mediated in accordance with this Section 19.2.

Article 20: CONFIDENTIAL INFORMATION

20.1 **Confidential Information.** Throughout the Term, neither Party shall disclose (a) the non-public terms or conditions of this Agreement, (b) information disclosed to such Party by the other Party that is (i) marked or expressly identified as “confidential” and (ii) accompanied by a statutory reference to the applicable section of the Public Records Act pursuant to which such information may be kept confidential or (c) Customer Information (collectively, “**Confidential Information**”) to a third party.

20.2 **Permitted Disclosures.** A Party may disclose Confidential Information: (a) to the Party’s Affiliates and the Party’s and its Affiliate’s employees, counsel, accountants, advisors, lenders, or equity investors who have a need to know such information and have agreed to keep such terms confidential; (b) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“**Disclosing Party**”), other than to those entities set forth in subsection (c); or (c) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC.

(a) **Procedure for Permitted Disclosures.** In connection with requests made pursuant to Section 20.2(b) (“**Disclosure Order**”) and disclosures pursuant to Section 20.2(c) (“**Regulatory Disclosure**”) each Party shall, to the extent practicable, use reasonable efforts to: (A) Notify the other Party prior to disclosing the Confidential Information and (B) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (I) prohibited from complying with a Disclosure Order or making the Regulatory Disclosure or (II) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information.

(b) **Disclosure Requests.** If a Party (“**Receiving Party**”) receives a request from a third party for access to, or inspection, disclosure or copying of, any of the other Party’s (the “**Supplying Party**”) Confidential Information (“**Disclosure Request**”), then the Receiving Party shall provide Notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such Notice, the Supplying Party may provide a Notice to the Receiving Party stating that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request and will seek a protective order or other judicial determination to protect the confidential information, in such case, the Supplying Party will cover all of its own costs and further agrees to indemnify and pay any and all costs incurred by Receiving Party as a result of the Supplying Party’s attempts to protect from disclosure the information. If the Supplying Party does not seek or does not receive a protective order or other judicial determination protecting the Confidential Information, the Receiving Party may disclose the Confidential Information, which disclosure will not be considered a violation of this Agreement. The Parties recognize that Buyer

is a public entity subject to the provisions of the California Public Records Act, and that disclosures made thereunder shall not be considered a violation of this Agreement.

20.3 **Remedies.** Except as provided in Section 20.2 with respect to the Parties' permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

20.4 **Customer Information.** Seller shall comply with all applicable Laws relating to the protection of Customer Information, including California Public Utilities Code Section 8380, *et seq.* and the "Rules Regarding Privacy and Security Protections for Energy Usage Data" adopted by the CPUC.

Article 21: GENERAL PROVISIONS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Cover Sheet and any exhibit, appendix, or other attachment hereto is an integral part hereof and is made a part of this Agreement by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

21.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

21.3 **Survival.** Applicable provisions of this Agreement shall continue in effect after termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. Notwithstanding anything to the contrary in this Agreement, (a) all rights under Sections 15.1 through 15.5 (Indemnities) and any other indemnity rights survive the end of the Term without limit, (b) all audit rights under Sections 17.2 and 17.3 survive the end of the Term for an additional one (1) year, or as required by applicable Law, (c) all rights and obligations under Article 20 (Confidentiality) survive the end of the Term without limit, and (d) all provisions relating to limitations of liability survive without limit.

21.4 **Waivers.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any waiver of a default under this Agreement must appear in a writing signed by the waiving Party.

21.5 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as Product seller and Product purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Portfolio, the Product or any business related to the Portfolio. This Agreement shall not impart any rights

enforceable by any third party other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender or indemnitee. In no event shall Buyer's receipt or review of any Seller submission, or Buyer's monitoring of Portfolio data or cooperation in Portfolio operations be construed as an assumption of any responsibility, liability or obligation of Seller for the design, construction or operation of the Portfolio.

21.6 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.7 **Mobile Sierra.** Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Mkt'g, LLC v. Maine Pub. Util. Comm'n*, 558 U.S. 165 (2010).

21.8 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

21.9 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, provided that any digital signatures are in compliance with California Code of Regulations, Title 2, Division 7, Chapter 10, Sections 22000 – 22005.

21.10 **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.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

21.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each

Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

21.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

Article 22: NOTICES

22.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Appendix VIII or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

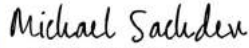
22.2 **Time of Delivery.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery, United States mail, or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

SUNRUN

DocuSigned by:



14EDE76AC0A444...

By:

Name: Michael SachdevTitle: Chief Product OfficerSILICON VALLEY CLEAN ENERGY
AUTHORITY

DocuSigned by:



5CA64B8AC4C24C3...

By:

Name: Girish BalachandranTitle: CEO

APPENDIX I

DESCRIPTION OF PORTFOLIO

The following describes the Portfolio to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

A. PORTFOLIO DESCRIPTION

Portfolio name: Santa Clara County Resilient Capacity Resource

Energy storage technology of Projects: Li-ion

Interconnection:

CAISO transmission access charge area (e.g. PG&E): PG&E

B. PORTFOLIO SIZE

Nameplate capacity (aggregate): Minimum: ■ MW; Maximum: ■ MW

APPENDIX II

OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of Product (Load Modification and Capacity Attributes) it can provide.

Physical Location and Point of Interconnection

Shall be as set forth in Appendix I-A.

Discharging and Charging

Maximum continuous discharge power (Dmax): ____ MW

Minimum continuous discharge power (Dmin): ____ MW

Maximum discharge duration at constant Dmax : ____ (hours)

Maximum continuous charge power (Cmax): ____ MW

Minimum continuous charge power (Cmin): ____ MW

Maximum charge duration at constant Cmax: ____ (hours)

Amount of Energy released to fully discharge: ____ MWh

Amount of Energy required to fully charge: ____ MWh

Round-trip efficiency: _____ %

Ramp Rates

[Describe ramp rates. If ramp rates vary with loading level, please provide a ramp rate for each segment within the operational range in which it differs. If ramp rates vary based on the operating mode (e.g. regulation), please provide separately.]

Dmin to Dmax: ____ MW/second

Cmin to Cmax: ____ MW/second

Dmax to Dmin: ____ MW/second

Cmax to Cmin: ____ MW/second

System Response Time

[Timing should commence with system at a steady-state starting value and end when system has reached a steady-state ending value. Idle means that the system is neither charging nor discharging, but is online and available for immediate operation. Time should include time from notification.]

Idle to Dmax: ____ seconds

Idle to Cmax: ____ seconds

Dmax to Cmax: ____ seconds

Cmax to Dmax: ____ seconds

Dmin to Cmin: ____ seconds

Cmin to Dmin: ____ seconds

[For the purpose of filling out this Appendix, Discharge (Charge) Start-up Time is the amount of time needed to go from non-operation to Dmin (Cmin). (The state of non-operation includes but is not limited to being unsynchronized to the grid.) Provide in seconds if appropriate.]

Discharge Start-up time (from notification to Dmin): ____ seconds

Charge Start-up time (from notification to Cmin): ____ seconds

Discharge Start-up Fuel: ____ MMBtu

Starts and other Run Time Limitations

[Describe start limitations. Include any daily or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s).]

Start limitations: _____

Run hour limitations: _____

[Describe minimum times.]

The minimum run time after a Discharge Start-up is ____ seconds

The minimum run time after a Charge Start-up is ____ seconds

The minimum down time after a shutdown is ____ seconds

Ancillary Services (defined terms below have the meaning found in the CAISO Tariff as of the Execution Date):

At ISO conditions, normal efficiency mode:

Spinning Reserves: Range: ____ MW

Non-Spinning Reserves: Range: ____ MW

Black Start capability (if applicable):

This agreement does not require delivery or measurement of the Ancillary Services specified herein, unless and until mutually agreed upon by Buyer and Seller.

APPENDIX III

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Portfolio description.
3. Indicative site plans representative of Projects to be included in Portfolio. Individual Project site plans for 10% or fewer of total Projects in Portfolio to be provided to SVCE at SVCE's discretion.
4. Description of any material planned changes to the Portfolio or the Site.
5. Schedule showing progress on Portfolio construction generally and achieving each of the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Indicative pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress of a representative portion of Projects to be

included in Portfolio. Pictures pertaining to 10% or fewer of individual Projects included in Portfolio to be provided to SVCE at SVCE’s discretion.

12. Compliance with workforce and prevailing wage requirements.

13. Any other documentation reasonably requested by Buyer.

SELLER’S PORTFOLIO LIST

as of [_____]

Customer Service Account Number	Customer name	Physical address of Site	Total Project capacity installed as part of the Portfolio	Project capacity installed to meet capacity associated with Operational Characteristics	Project capacity installed in excess of capacity associated with Operational Characteristics	Project manufacturer(s) and model number(s) installed at Site with corresponding Project capacity	Customer type (i.e., residential, commercial, municipal)	Project description (e.g., stand-alone storage, solar + storage, multi-family, disadvantaged community, etc.)	CAISO Resource ID	Sub-LAP

[By submitting this Seller’s Portfolio List to Buyer, Seller attests as of the date signed below, that all of the information is accurate and that the Customers and Projects comprising Seller’s Portfolio List are in compliance with the terms of the Agreement.]

Signature:	
Name:	_____
Title:	_____
Date:	_____

APPENDIX IV
CERTIFICATION
FOR COMMERCIAL OPERATION

This certification of commercial operation (“Certification”) is delivered by _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller each hereby certifies and represents to Buyer the following:

- (1) The Portfolio has been completed and commissioned and it became commercially operable on / /.
- (2) The Portfolio has been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio has been constructed in accordance with the Project Safety Plan.
- (4) The Portfolio is capable of producing and delivering Product in the Contract Amounts, and a performance test was conducted to confirm this capability.
- (5) Seller has designed and built the Portfolio to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (6) The design and construction of the Portfolio was carried out by the original equipment manufacturer or other qualified organization in accordance with the designs and requirements of the original equipment manufacturer.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX V
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
Expiry Date:

Beneficiary:

Silicon Valley Clean Energy Authority, a California joint powers authority
333 W. El Camino Real, Suite 290
Sunnyvale, California 94087

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Energy Storage Resource Adequacy Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on _____, 201_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds promptly and no later than the business day immediately following our receipt of a drawing certificate from Beneficiary in the form attached hereto as Exhibit A.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each

anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority ("Beneficiary"), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Resource Adequacy Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because an event for which Beneficiary is entitled to make a drawing under this Letter of Credit pursuant to the Agreement has occurred.
3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority

Name and Title of Authorized Representative

Date _____

APPENDIX VI

PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

Identify the applicable safety-related codes, standards, and regulations (CSR) which govern the design, construction, operation, maintenance of the Portfolio using the proposed technology.

Describe the Seller's and the Seller's Contractor(s)' safety programs and policies. Describe Seller's compliance with any safety-related industry standards or any industry certifications (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), if applicable.

Part Two: Portfolio Design and Description

Describe Seller's safety engineering approach to select equipment and design systems and the Portfolio to reduce risks and mitigate the impacts of safety-related incidents, including cascading failures, excessive temperatures, thermal runaways, fires, explosions, disk fractures, hazardous chemical releases.

Describe the results of any failure mode effects analyses (FMEA) or similar safety engineering evaluations. In the case of lithium ion batteries, describe the safety-related reasons, including design features and historical safety records, for selecting particular anode and cathode materials and a particular manufacturer.

Provide a list of major facility components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

- a) Equipment manufacturer's datasheet, model numbers, etc.,
- b) Technical specifications,
- c) Equipment safety-related certifications (e.g. UL),
- d) Safety-related systems, and
- e) Approximate volumes and types of hazardous materials expected to be on Site.

Part Three: Project Safety Management

Identify and describe any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Portfolio. Describe the Seller's applicable site-specific safety plans, risk mitigation, Safeguards and layers of protection, including but not necessarily limited to:

- a) Engineering controls,
- b) Work practices,
- c) Administrative controls,
- d) Personal protective equipment and procedures,
- e) Incident response and recovery plans,
- f) Contractor pre-qualification and management,

- g) Operating procedures,
- h) Emergency plans,
- i) Training and qualification programs,
- j) Disposal, recycle, transportation and reuse procedures, and
- k) Physical security measures.

APPENDIX VII**MUA DECISION ATTESTATION**

This attestation is delivered by _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer, as of the date set forth below, that with regard to the Portfolio, Seller is following all the rules set forth in Exhibit A of CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

EXECUTED by SELLER this _____ day of _____, 20__.

Signature: _____
Name: _____
Title: _____

APPENDIX VIII**NOTICES**

SELLER	BUYER³
All Notices: Street: City: Attn: Phone: Facsimile: Email:	All Notices: Street: 333 W. El Camino Real, Suite 290 City: Sunnyvale, California Zip: 94087 Attn: Girish Balachandran, CEO Phone: (408) 721-5301 Email: girish@svcleanenergy.org With a copy to: []
Invoices: Attn: Phone: E-mail:	Invoices: Attn: Power Supply Group Phone: (408) 721-5301 Email: SVCEpowersettlements@svcleanenergy.org
Scheduling: Attn: Phone: Email:	Scheduling: Attn: ZGlobal Phone: (916) 221-4327 Email: eric@zglobal.biz
Payments: Attn: Phone: E-mail:	Payments: Attn: Finance Group Phone: (408) 721-5301 Email: SVCEpowersettlements@svcleanenergy.org
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: [REDACTED] [REDACTED] [REDACTED]
Emergency Contact: Attn: Phone: E-mail:	Emergency Contact: Phone: (408) 721-5301 x1009 Email: monica.padilla@svcleanenergy.org

APPENDIX IX**PORTFOLIO MODIFICATION CERTIFICATION**

This certification of commercial operation for a Portfolio Modification (“Portfolio Modification Certification”) is delivered by each of _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Portfolio Modification Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller each hereby certifies and represents to Buyer the following, severally and not jointly:

- (1) All parts of the Portfolio affected by the Portfolio Modification became commercially operational on / /.
- (2) All parts of the Portfolio affected by the Portfolio Modification have been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio is capable of producing and delivering Product in the Contract Amounts, and a performance test was conducted to confirm this capability.
- (4) Seller has designed and built the parts of the Portfolio affected by the Portfolio Modification to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (5) The design and construction of the parts of the Portfolio affected by the Portfolio Modification was carried out by the original equipment manufacturer or other qualified organization.
- (6) The Portfolio as modified under the Portfolio Modification is able to operate in a manner consistent with the Safety Requirements.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX X**RESERVED****APPENDIX XI****GO TO MARKET PLAN****Silicon Valley Clean Energy and Sunrun Go to Market Plan****1. Purpose of this GTM Plan**

The intent of this GTM Plan is to clearly define the process that Sunrun and SVCE will follow in bringing this offering forward to SVCE customers. Minor adjustments to the GTM process are expected for the duration of the contract, but this GTM Plan reflects the initial understanding and outlines key milestones, requirements and assumptions on the part of Sunrun and SVCE. Substantive changes to the GTM process outlined in this GTM Plan will need to be made through an additional contract exhibit.

While Sunrun's customer portfolio commitments are enumerated in Section 5.4c of the Load Modification Agreement, Sunrun's goal for the Contract Amount is to deliver 50% of contract capacity from assets associated with single-family customer accounts and 50% of contract capacity from assets associated with multifamily customer accounts. Sunrun will work with SVCE to attempt to achieve this delivery goal through the activities in this GTM Plan.

2. Teams

SVCE will involve the following staff:

Name	Department	Responsibility
Aimee Bailey	Decarb & Grid Innovation	Program lead
Justin Zagunis	Decarb & Grid Innovation	GTM and EM&V support
Rebecca Fang	Decarb & Grid Innovation	Data analysis lead
Nik Zanolto	Administration	Data analysis support
Zoe Elizabeth	Account Services	Customer contact and marketing support
Pamela Leonard	Communications and Marketing	Marketing lead

Sunrun will involve the following staff:

Name	Department	Responsibility
Nick Smallwood	Business Development	SRUN Sponsor
Michael Norbeck	Business Development	Program lead
Scott Peattie	Business Development	Multifamily segment lead
Nora Hennings	Business Development	Co-marketing & program launch
Nate Henson	Growth Marketing	Go-to-Market planning and execution
Alex Sherman	Energy Services Program Management	Program management

Additional staff may be added with written notice to the other party.

3. Outreach Materials

SVCE will rely on Sunrun to prepare the majority of outreach materials. Some materials repurposed from other, similar projects will also be provided by Sunrun. Materials will include:

Tactic	Description	Lead Party	Sunrun Role	SVCE Role
SVCE webpage	Webpage hosted on SVCE's website explaining the program and pointing to Sunrun's lead capture landing webpage	SVCE	Provide sample content for SVCE to use	Implement and host webpage
Program Lead Capture Landing Webpage	Virtual location to host online materials and allow for customer to self-identify	Sunrun	Development; hosting	Review; provide brand guidelines
Direct Mail Invitations	Direct outreach to introduce customers to the program and solicit participation	Sunrun	Copy; images; targeting criteria	Review copy; review targeting and deployment plan
Social Media Posted / Paid Social Targeted	Social media posts to drive engagement with website	Sunrun	Design; copy; images	Review

Display Ads / YouTube Videos	Ad content to drive engagement with website	Sunrun	Design support; copy; images; videos	Review copy; post as mutually agreed-upon
FAQ	Posted to website, support for those interested	Sunrun	Content creation hosting	Review
Case Studies	Posted to website, marketing	Sunrun	Content creation hosting	Review
Multifamily Data Sharing Authorization Form	To allow Sunrun access to necessary data not included in Data Hive; may include aggregated multifamily site energy usage data, whether site has been impacted by PSPS events, and service level (depending on what data SVCE can make available while complying with relevant privacy policies); SVCE and Sunrun will mutually agree on data to be shared, format, and process	Sunrun	Provide draft and final; get signatures for qualified projects	Review; set up internal processes for handling requests; provide relevant data
End-User Contract	Final contract with the end user to confirm project and finalize sale	Sunrun	Provide draft and final	Review

Sunrun will provide all outreach materials for review and approval by appropriate SVCE staff prior to use and will make adjustments as requested by the SVCE staff. SVCE will provide direction on marketing messages that it wishes to incorporate into these materials to support its organizational positions (e.g. futureproofing, decarbonization/electrification).

SVCE does not plan to provide any co-marketing to this program outside of what is articulated herein. Sunrun shall inform SVCE of any marketing efforts (included in the table above, elsewhere in this document, or identified at a later time during program implementation) that Sunrun plans to undertake under this GTM Plan and will allow for SVCE review and approval, at SVCE's sole and absolute discretion, of the content and/or approach. For strategic marketing elements or other content that does not meet the definition of Co-Marketing Materials (such as a campaign approach proposed by Sunrun), SVCE and Sunrun will work to determine a mutually agreeable timeframe for SVCE review and approval.

Content used by Sunrun for marketing may guide interested customers to the program-specific SVCE or Sunrun webpages.

4. Customer Outreach Process - Single-Family

Most single-family customer recruitment will follow a multi-step process, which includes:

Step	Description	Lead Party	Sunrun Role	SVCE Role
Outreach	Targeted and web/social campaigns across multiple marketing mediums and target segments.	Sunrun	Campaign calendar, campaign setup, targeting & launch; Co-branded collateral, messaging, targeting & media strategy	Review Campaign calendar, campaign setup, targeting & launch; review messaging
Initial Conversation	Lead qualification for handraisers responding to outreach campaigns via web form or phone call	Sunrun	Lead capture form design & hosting.; Local call in number and inbound call center	Design input on lead form, guidance on desired customer experience
Meetings	Virtual sales consultation scheduled with qualified leads	Sunrun	Qualify lead and schedule appt., then conduct virtual appt	Guidance on script and desired experience
Proposals	Sunrun proposal for recommended product mix	Sunrun	Provide proposal from Sunrun Sales Platform (SPLAT)	Input on proposal contents and possible co-branding
Enrollment	Signed contract approval, schedule site audit, manage system design process	Sunrun	Manage enrollment through SFDC, provide feedback loop on contracts to SVCE CRM	Review enrollment progress and feedback loop; intake data from Sunrun

Sunrun will also continue to discuss with SVCE possible integration into SVCE's online Solar Assistant tool offered through pickmysolar. SVCE will provide support as needed if Sunrun, at its discretion, chooses to integrate with SVCE's online Solar Assistant tool. SVCE may separately provide Sunrun with the opportunity to present to a group of member cities' staff on the program and general offerings, as mutually agreed upon by Sunrun and SVCE.

To facilitate the identification of priority customers or customer segments (e.g., SGIP Equity Resiliency eligible customers), SVCE has shared some masked customer data with Sunrun. Sunrun may choose to identify a list of priority customers based on the data. At SVCE's discretion, SVCE may take the masked list of priority customers from Sunrun, internally identify these masked customers, and send targeted outreach to a subset thereof. Data sharing in support of outreach to potential priority customers will follow the process illustrated below:

Tactic	Description	Lead Party	Sunrun Role	SVCE Role
Masked Data Sharing	SVCE provided masked data through a separate non-disclosure agreement	SVCE	Established fields to be shared	Compiled and shared data
Masked Customer Analysis	Data is processed by Sunrun to identify favorable accounts	Sunrun	Lead analysis; create list of masked priority accounts	N/A
SVCE Outreach	Email outreach to targeted customers identified by Sunrun through the masked data	SVCE	Analyze data and provide list to target; Create content	Optional activity, at SVCE's discretion. SVCE may leverage its channels (e.g., direct email marketing) to reach the priority accounts identified through Sunrun's masked data analysis. Sunrun will prepare content to support SVCE's outreach. SVCE refers interested respondents to SVCE program webpage. Maximum number of accounts targeted and channels utilized to be determined jointly by SVCE and Sunrun, with no guarantee of leads generated.

5. Customer Outreach Process - Multifamily

Sunrun's sales process for Multifamily relies on a smaller and more specialized in-house team. Sunrun will lead the process, with support from SVCE, as follows:

Step	Description	Lead Party	Sunrun Role	SVCE Role
-------------	--------------------	-------------------	--------------------	------------------

Outreach	Predominantly direct inbound and outbound leads, many relationship-based, with some presence in multifamily-specific marketing (conferences, print advertising, social media)	Sunrun	Direct outreach, targeting & media strategy	Review any co-branded or program-related messaging
Initial Conversation	Lead qualification via teleconference meetings	Sunrun	Local call in number and inbound call center	Inform desired customer experience
Meetings	In-person (preferred, if possible) or virtual sales consultation scheduled with qualified leads	Sunrun	Qualify lead and schedule appointment	Inform desired customer experience; sit in at request of customer; SVCE will work with Sunrun to identify planned meetings that SVCE is interested in sitting in on (at least 5 opportunities)
Proposals	Sunrun proposal for recommended product mix	Sunrun	Access all available data through Data Hive; work with SVCE to scope additional data needed and establish data sharing process, including an authorization form; get authorization form signed as needed; usage analysis, initial engineering design, financial pro-forma, proposal creation	Upon receipt of signed authorization form, provide data as mutually agreed upon by SVCE and Sunrun – focus will be on necessary data not available through Data Hive, such as aggregated site-level 12 month meter data (15 min interval if possible), feedback on design
Enrollment	Signed contract approval, schedule site audit, manage system design process	Sunrun	Manage enrollment through SFDC, provide feedback loop on contracts to SVCE CRM	Review enrollment progress and feedback loop; intake data from Sunrun

6. Ongoing Customer Support

Given SVCE's role in helping acquire customers and market the program, SVCE wants to ensure that all participants have positive experiences throughout the lifetime of the projects. Sunrun shall provide excellent customer support throughout the customer acquisition process, as well as throughout the duration of the customer contract. Key elements of Sunrun's customer support shall include:

- Regional installation coordinator to ensure timely execution and prioritize issue resolution
- Project coordinator to manage site audit, design, installation, and permission to operate handoffs
- Customer care call center for inbound issue resolution
- Field service staffing to roll trucks to customer should an onsite issue resolution be needed
- Assigned Field Sales Consultant as primary contact for life of relationship with Sunrun

7. Flagship Elements

SVCE supports innovation that can provide better services and benefit its customers. While the contract with Sunrun is for resource adequacy, SVCE is interested in incorporating other "flagship" elements into the offerings for customers to consider. Flagship elements are strategies, approaches, or methods that are innovative, meet with SVCE's mission, and otherwise provide co-benefits to the community. Flagship elements may include:

- Combining the construction of solar and/or storage onsite with one or more other electrical upgrades (e.g. electric vehicle charging or heat pump technologies)
- Sizing new equipment to account for future load impacts (e.g. panel upgrades to accommodate a future electric vehicle)
- Providing customer-beneficial technologies like energy management
- Supporting SVCE priorities in decarbonization and electrification

SVCE and Sunrun will continue to discuss flagship offerings for single-family accounts. One or more flagship offerings may be mutually agreed upon through these conversations. Depending on the flagship offering and target audiences, SVCE and Sunrun may choose to commit to additional incentives, marketing, or program support. Such offerings and corresponding activities would need to be addressed through a separate agreement.

As multifamily accounts are qualified, Sunrun will discuss with SVCE the commercially reasonable opportunities for flagship elements at each site and the potential of developing these projects, potentially to include flagship elements, within a reasonable time frame. Upon agreement between Sunrun and SVCE, Sunrun will approach the customers with the concept. Customers can then decide whether they are interested in pursuing available flagship elements at their site. If flagship elements may eliminate the ability to deliver the capacity within the delivery window, then Sunrun and SVCE will discuss how and whether to move forward or exclude these accounts from the committed capacity and/or the flagship elements.

8. Parallel Efforts

While working through marketing elements, SVCE will continue to support Sunrun in doing the data analysis needed.

Evaluation, measurement and verification (EM&V) is important to SVCE to ensure that its programs are effective in achieving their goals, and to inform future and ongoing efforts. Some level of EM&V may be deemed appropriate by SVCE, such as customer satisfaction and level of impact for effort, and Sunrun will support SVCE's efforts in connecting with customers or tracking key metrics. SVCE and Sunrun will further discuss and develop an EM&V Plan to guide this work.

To help streamline the installation of projects, SVCE may facilitate one or more meetings between Sunrun and SVCE member cities' building officials and fire officials. The goal would be to reach all authorities having jurisdiction that may receive a project before the permits need to be routed through those cities. Informing relevant officials ahead of time will support the goal of streamlining project installation. SVCE and Sunrun will work to develop the objectives, agenda and scheduling of any meeting(s).

9. Coordination with Other SVCE Programs

SVCE has other ongoing programs that may also be able to support (or draw support from) the work being done by Sunrun. As far as it is beneficial for one or more programs, SVCE will keep Sunrun apprised of opportunities for coordination. Sunrun should plan to coordinate with at least the following programs:

- California Electric Vehicle Infrastructure Project (CALeVIP): This program provides first-come, first-served incentives for level 2 electric vehicle infrastructure. There are stipulations, but multifamily properties are eligible for incentives that can cover up to 75% of project costs. SVCE expects the program to open in Fall 2020.
- Resilience Efforts: Due to COVID-19 impacts in SVCE communities, SVCE recently allocated \$10M to support customer relief and community resilience. For funds deployed towards community resilience, support for energy resilience at critical or city facilities could be a natural fit for Sunrun and may be eligible for additional SVCE funding.
- Multifamily Housing EV Infrastructure Technical Assistance: SVCE is in the process of launching a technical assistance program for multifamily properties to learn about and select electric vehicle charging infrastructure to be deployed on their property. Sunrun may refer people to that program or receive referrals from people by that program, at the interest of the site host.
- Customer Resource Center (online website): SVCE is developing a new set of online resources that will help all customers better understand energy usage and technologies. Solar, storage, heat pumps, electric vehicles, electric vehicle chargers, and smart thermostats are all examples of technologies that will be explained, marketed, and potentially incentivized through this website. Sunrun's offerings shall be incorporated into the broader Customer Resource Center framework as mutually agreed, and ongoing materials and communications should refer customers to SVCE's online resources as applicable.

10. Data Integration

While SVCE and Sunrun have already begun sharing data to facilitate customer identification, there is additional need for data sharing to support ongoing operations. Accordingly, Sunrun will work with SVCE staff to establish integration or regular transfer of data to SVCE databases. This will include SVCE's customer relationship management system and SVCE's overall customer database (DAISY). The data provided by Sunrun to SVCE to add to its databases will be customer specific and include insights developed through customer interactions.

SVCE is seeking relevant information on customer interactions (to include some or all of the following, on a portfolio basis: average installation size, customer costs, and value streams delivered by the program to customers and/or Sunrun); other technical information gathered through the installation process (to include some or all of the following, at a customer-specific level, for a mutually agreed-upon sample of customer projects: electrical panel size and load, individual customer contact information, and installation specifics); and other data of interest to SVCE in its role as a community provider of carbon-free energy and administrator of decarbonization programs.

Additional requirements regarding sharing of customer project-specific information are discussed in Appendix III of the Load Modification Agreement. It should also be noted that SVCE and Sunrun will mutually determine categories of data to be shared pertaining to program deployment and management, along with the related transfer process from Sunrun to SVCE, as part of EM&V Plan development.

11. GTM Metrics

As a component of SVCE's oversight of the project, Sunrun shall provide reporting on key performance indicators (KPIs) for the duration of customer engagement and through the end of project lifetimes. Reporting shall start at a 2-week frequency until such point that all customers have signed contracts. At such a point, reporting shall transition to a 2-month frequency. Metrics may include:

- Number of consultations
- Number of signed contracts
- Number of installations
- Capacity of installs
- Capacity interconnected
- Project issues

Sunrun should also provide a brief summary of key lessons that have been learned, takeaways, and adjustments being made to improve the program in each report.

12. Timeline

To establish expectations around when reviews and materials will need to be completed, the following table of milestones will be used. This GTM Plan mostly indicates agreement on certain processes and roles, but additional work must be done to reach agreement on the elements necessary to deliver a successful program. These dates are approximations. Sunrun will provide SVCE sufficient time to respond with feedback/approval and direction for each relevant component as stipulated in this GTM Plan.

Section	Component	Expected Work Timeframe
I. Outreach Materials	SVCE provides direction on additional marketing messages	August/September 2020
	Review Sunrun marketing documents	

	SVCE program webpage complete	
	Finalize list of priority customers	
II. Customer Outreach Process – Single-Family	SVCE shares masked data for determining priority customer lists for possible SVCE targeted outreach	<i>[Completed in advance of contract execution]</i>
	Sunrun determines priority customer lists for possible SVCE targeted outreach	August 2020
	Establish Sunrun campaign approach and materials	August/September 2020
	Launch Sunrun campaign and implement outreach	September 2020
	Execute direct outreach through SVCE channels targeting the priority customer lists <i>[to be completed at SVCE discretion]</i>	September 2020 and ongoing through program deployment term, as required/mutually agreed-upon
	Project installation/customer enrollment	Beginning September 2020, through mutually agreed-upon program deployment term
III. Customer Outreach Process - Multifamily	Establish campaign approach and materials, as relevant/required	August/September 2020
	Launch campaign and implement outreach as relevant/required	September 2020
	Project installation/customer enrollment	Beginning September 2020, through mutually agreed-upon program deployment term
IV. Ongoing Customer Support	Customer support to SVCE customer participants	Beginning September 2020 and ongoing over life of projects
V. Flagship Elements	Determine which, if any, mutually-agreed upon flagship elements to include as part of single-family-customer-facing program presentment	By January 2021

	Integrate relevant flagship elements into single-family-customer-facing program presentment	By February 2021 and ongoing through program deployment term, as mutually agreed-upon
	Discuss opportunities at qualified multifamily properties, offer flagship elements, and support interested sites	Beginning September 2020, through mutually agreed-upon program deployment term
VI. Parallel Efforts	Establishment of data transfer processes from Sunrun to SVCE	August/September 2020 (and ongoing, as needed/mutually agreed-upon)
	Possible meetings with relevant city officials	September 2020
	EM&V Plan complete	By January 2021
VII. Data Integration	Establishment of data transfer processes from Sunrun to SVCE	August/September 2020 (and ongoing, as needed/mutually agreed-upon)
VIII. GTM Metrics	Sharing of KPIs and summary of lessons learned	Beginning September 2020, through mutually agreed-upon program deployment term

13. Customer Program Incentive

A \$1,000 Program Participation Incentive - or alternate incentive payment, as mutually agreed-upon by SVCE and Sunrun - will be paid by Sunrun to each single-family customer enrolled in the program to reflect benefits associated with the SVCE/Sunrun grid services program. This incentive shall be paid to the customer after the customer's system, built pursuant to a Sunrun Customer Agreement, reaches permission to operate with the customer's utility provider. Sunrun and SVCE will further discuss how to present this incentive to the customers (including who sends the incentive, the form it takes, and what language is included to explain the source of the incentive).

Multifamily residential customers will receive free solar credits through Virtual Net Metering and backup for common area loads (only projects located in high fire threat or that experienced two or more PSPS events). Multifamily property owners/managers responsible for paying for the systems will be connected with relevant, available incentives and funding. As mutually agreed upon by SVCE and Sunrun, an incentive payment or alternative financial benefit to reflect benefits associated with the SVCE/Sunrun grid services program will be calculated and paid to each multifamily project.

14. DEFINITIONS

AS USED IN THIS APPENDIX XI, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW:

“Co-Marketing Materials” means the messaging and materials, whether print, digital, telephone scripts or otherwise, produced by either Party for the Residential Solar Products, which may include SVCE Trademarks and Sunrun Trademarks.

“Residential Solar Products” means any product offering to a customer in which a photovoltaic system, with or without a battery storage element, is both (i) installed on the residential property of such customer; and (ii) (a) owned by a person other than such customer, including but not limited to contractual arrangements pursuant to which such photovoltaic system is leased to such customer or pursuant to which electricity from such photovoltaic system is sold to such customer under a power purchase agreement; or (b) purchased by such customer or financed by such customer through home equity lines of credit, home equity loans, same-as-cash financing, any municipal financing program(s), or any other direct sale and/or financing mechanism.

“Trademarks” means any trademark, service mark, logo, brand or other product positioning or other distinctive brand element, or any content or other work of authorship, that are provided by for use in connection with this Agreement, in each case relating to a Party or any of its products or services.

15. Approval to Use Co-Marketing Materials

Any Co-Marketing Materials created by the Parties (the **“Creating Party”**) must first be submitted to other party (the **“Approving Party”**) along with a description of the proposed intended use(s) for the Approving Party’s approval, in its sole and absolute discretion prior to any use of such Co-Marketing Materials under this Agreement. The Approving Party shall provide written approval or objection to the proposed use of the Co-Marketing Materials within ten business days of receipt of such submission by the Creating Party, and if the Approving Party does not provide a written response in such ten day period, the Approving Party shall be deemed to have denied the proposed use of the Co-Marketing Materials created by the Creating Party. Sunrun agrees to include a disclaimer of SVCE liability in communications with customers that reference SVCE or any SVCE programs, if requested by SVCE. Such disclaimer may be substantially similar to the following, subject to SVCE’s right to revise:

“SVCE does not endorse or guarantee, and makes no warranties or representations regarding, any vendor, contractor, service or product. SVCE shall not be liable for any loss or damage of any kind arising out of or connected to any vendor, contractor, service or product. Any transactions that you enter into with a vendor, contractor or other third party are solely between you and that vendor, contractor or other third party.”

16. EXPENSES

UNLESS OTHERWISE AGREED TO BY THE PARTIES IN WRITING, EACH PARTY SHALL BEAR THEIR OWN COSTS AND EXPENSES IN CONNECTION WITH THIS AGREEMENT.

17. ACKNOWLEDGMENT OF SIMILAR SVCE PROGRAMS

The parties acknowledge that SVCE plans to offer its customers a variety of resources and programs, itself or with other consultants, that may relate to the subject matter of this Agreement. This includes SVCE’s Innovation Onramp pilot programs and SVCE’s online customer-facing resources (the “eHub” or “Customer Resource Center”) which include the pickmysolar tool. The parties acknowledge that SVCE will continue to offer these resources and programs to customers, including the marketing thereof, during this Agreement. SVCE may further choose to offer

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customer incentives or other programs to customers, even those relating to the subject matter of this Agreement, without exclusion.

Notwithstanding the preceding paragraph, SVCE will not offer its single-family and multifamily customers a program comparable to that outlined in this Agreement and GTM Plan prior to the Initial Delivery Date. For a program to be comparable, it would need to include both co-marketing elements to facilitate deployment/installation of projects at customer sites and payments from SVCE for load modification or capacity. Direct customer incentives for solar or storage offered through the eHub, or purchasing capacity from aggregated, primarily existing resources, will not be considered comparable programs. If SVCE wishes to offer a comparable program to the relevant customers, SVCE will inform Sunrun and either work together to amend this GTM Plan or move forward with SVCE's right to terminate the GTM Plan.

18. TRADEMARK LICENSE, OWNERSHIP & RESTRICTIONS

(a) Subject to the terms of this Agreement, (i) SVCE grants to Sunrun a royalty-free, nonexclusive, nontransferable, non-sublicensable, revocable license to use the SVCE Trademarks for use in connection with co-offering of the Residential Solar Product during the Term, including, without limitation, the creation of the Co-Marketing Materials and the promotion and distribution of Co-Marketing Materials across Sunrun's offline and online marketing channels in connection with this Agreement and (ii) Sunrun grants to SVCE a royalty-free, nonexclusive, nontransferable, non-sublicensable, revocable license to use the Sunrun Trademarks for use in connection with co-offering of the Residential Solar Product during the Term, including, without limitation, the promotion and distribution of Co-Marketing Materials across SVCE's offline and online marketing channels in connection with this Agreement.

(b) SVCE shall own all rights in the SVCE Trademarks and reserves the right to use the SVCE Trademarks and license the SVCE Trademarks to other entities, and no provision of this Agreement shall be construed to effect any present or future transfer of title to Sunrun or to any Affiliate of Sunrun with respect to any of the SVCE Trademarks or other property of SVCE. Except as expressly provided in this Agreement, Sunrun or any Affiliate of Sunrun will not: (i) transfer, sell, license, sublicense, distribute or commercially exploit the SVCE Trademarks; (ii) modify, reproduce, create derivative or collective works from, or in any way otherwise exploit the SVCE Trademarks in whole or in part, or (iii) contest, oppose or challenge SVCE's ownership of the SVCE Trademarks or impair SVCE's ownership or rights in the SVCE Trademarks in any way. Sunrun agrees that it shall only use the form of SVCE Trademarks as directed by SVCE in writing.

(c) Sunrun shall own all rights in the Sunrun Trademarks and reserves the right to use the Sunrun Trademarks and license the Sunrun Trademarks to other entities, and no provision of this Agreement shall be construed to effect any present or future transfer of title to SVCE or to any Affiliate of SVCE with respect to any of the Sunrun Trademarks or other property of Sunrun. Except as expressly provided in this Agreement, SVCE or any Affiliate of SVCE will not: (i) transfer, sell, license, sublicense, distribute or commercially exploit the Sunrun Trademarks; (ii) modify, reproduce, create derivative or collective works from, or in any way otherwise exploit the Sunrun Trademarks in whole or in part, or (iii) contest, oppose or challenge Sunrun's ownership of the Sunrun Trademarks or impair Sunrun's ownership or rights in the Sunrun Trademarks in any way.




Notwithstanding anything herein, neither party shall use the Trademarks of the other party without the prior written consent of such Party.

19. TERMINATION OF GTM PLAN

The Parties shall have the right to terminate this GTM Plan with or without cause by giving notice of termination to the other Party. Any such notice shall specify the effective date of termination (“**GTM Termination Date**”), which shall be no sooner than ninety (90) days after the date of the notice to the extent allowable under applicable law. Upon the GTM Termination Date, the Parties shall immediately discontinue all further use of the other Party’s Trademarks, the Co-Marketing Materials, and any mark or marks that be may confusingly similar thereto. Termination of the GTM Plan affects only the activities described in the GTM Plan and does not impact the rest of the Agreement.

Notwithstanding the preceding paragraph, SVCE shall continue to be able to host a webpage describing the LMA contract, program, and relationship with Sunrun.

Schedule I**Sunrun Trademarks**

OWNER	TRADEMARK	COUNTRY	REGISTRATION NO.
Sunrun Inc.	Brightbox	United States of America	87335960, 87335949
Sunrun Inc.	Sunrun	United States of America	85168901, 86403447
Sunrun Inc.		United States of America	85594817
Sunrun Inc.		United States of America	87222682, 85594817
Sunrun Inc.		United States of America	87222682, 85594817

Schedule II

SVCE Trademarks

APPENDIX XII

RA-SPECIFIC CONDITIONS AND TERMS

PART ONE: CAPACITY ATTRIBUTE CONDITIONS PRECEDENT

1. Seller shall have provided to Buyer a certification of Seller, substantially in the form attached hereto as Appendix IV, demonstrating that the Project(s) comprising the Portfolio as set forth in Seller's Portfolio List, can deliver, in aggregate, the Capacity Attributes of Product in the applicable Contract Amounts.
2. Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Portfolio and to enable Seller to deliver the Capacity Attributes of the Product to Buyer at the Contract Amounts (and including as a Proxy Demand Resource or as a Reliability Demand Response Resource).
3. Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Portfolio successfully completed all applicable testing and registration procedures required by CAISO to Bid into the CAISO Markets, including as a Proxy Demand Resource or Reliability Demand Response Resource, in a manner sufficient to enable delivery of the Contract Amounts of Product to Buyer.
4. Seller shall have obtained certification of Product in accordance with the CAISO Tariff and CPUC requirements applicable to Product, including as a Proxy Demand Resource or as a Reliability Demand Response Resource, (i) resulting in certifications of not less than the Contract Amounts and (ii) so as to ensure the applicable Stage of the Portfolio is fully deliverable such that Seller is able to deliver Product in the Contract Amounts to Buyer for purposes of counting towards Buyer's Compliance Obligations.
5. Seller shall have provided documentation demonstrating Seller's calculations related to and attendant fulfillment of the CAISO NQC criteria, or any revised Resource Adequacy criteria, for the applicable Stage of the Portfolio.
6. Seller shall have submitted, or shall have caused its SC to have submitted, a Notice to Buyer including Seller's proposed Supply Plan for the first Showing Month, and Seller shall have properly submitted, or shall have caused its SC to have properly submitted, a Supply Plan to CAISO.

PART TWO: RA-SPECIFIC PAYMENT TERMS

1. No later than fifteen (15) Business Days prior to the applicable Compliance Showing deadlines for each Showing Month, Seller shall submit, or cause its SC to submit, a Notice to Buyer which includes Seller's proposed Supply Plan for such Showing Month in a format and to a platform as Notified by Buyer to Seller prior to such deadline. No later than ten (10) Business Days before the applicable Compliance Showing deadlines for each Showing Month, Buyer may Notify Seller of any administrative or typographical corrections to the Supply Plan and Seller shall implement any such corrections in the Supply Plan that it submits, or causes to be submitted, to

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the CAISO. In the event that Buyer does not Notify Seller of any such corrections to the proposed Supply Plan, Seller shall submit the Supply Plan to CAISO as it was proposed by Notice to Buyer.

2. After following the foregoing procedure, Seller shall submit, or cause to be submitted, a Supply Plan to CAISO, in accordance with the applicable Compliance Showing deadlines for each Showing Month, to identify and confirm the Product to be delivered to Buyer (or, with regard to Resold Product, Buyer's designee) for each day within the applicable Showing Month. For each of the Capacity Attributes of Product that Seller submits in its Supply Plan in the applicable Showing Month, Seller shall not submit an amount greater than the Contract Amount of each of the respective Capacity Attributes. The lowest daily quantity that Seller submits for each of the Capacity Attributes in a Supply Plan shall be deemed to be the amount of the respective Capacity Attributes that Seller has delivered for such Showing Month ("Delivered Quantities").

3. For all Capacity Attributes of the Product that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 9, pay Seller a monthly payment ("Monthly Payment" or "MP") as follows:

$$MP = (DQ / CA) \times PQ \times CP$$

where,

DQ = The sum of the Delivered Quantities of all RA Attributes, Local RA Attributes, and Flexible Attributes;

CA = The sum of the Contract Amounts of all RA Attributes, Local RA Attributes, and Flexible Attributes; and

CP = The contract price set forth on the Cover Sheet ("Contract Price").

PART THREE: RA-SPECIFIC OPERATIONAL COVENANTS

1. Seller shall have a DRP Agreement in place with the CAISO and is required to satisfy registration requirements and to provide information to SVCE and the CAISO to allow the CAISO to establish performance evaluation methodologies in accordance with the Tariff and the applicable Business Practice Manuals.

2. Seller shall be the SC or shall designate a qualified third party to fulfill such role for the Portfolio in order to deliver Product to Buyer during the Delivery Term in accordance with the terms of this Agreement. Seller shall be solely responsible for all costs associated with the SC. Seller shall take, or cause its SC to take, all necessary steps to qualify itself and the Portfolio in such other manner identified and approved by the CAISO and CPUC that permits Seller to provide Product to Buyer .

3. Seller shall comply, and shall cause SC each Customer, and each Project owner and operator to comply, with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, including any Bidding of the Portfolio to meet any Must Offer Obligations, in order to deliver the Product to Buyer and allow Buyer to use the Product to satisfy Buyer's Compliance Obligations.

4. Seller shall not accept, and shall cause the Portfolio's SC to not accept, any proposed CPM or RMR designation by the CAISO unless and until Buyer has agreed to accept such designation in a Notice. In addition, Seller shall promptly Notify, or cause the Portfolio's SC to promptly Notify, Buyer within one (1) Business Day of the time Seller or the SC receives a proposal from CAISO to designate any portion of the Product as CPM Capacity or RMR Generation. During the Delivery Term, Buyer has exclusive right to enter into a RMR Contract with respect to the Product or any component thereof, provided that the RMR Contract would not require the Portfolio to operate beyond the Operational Characteristics or beyond the end of the Delivery Term.

5. Seller shall provide buyer access to the Project's CAISO Portal in order to view market awards or send Buyer a copy of the Project's market awards no later than 16:00 each day the Project is bid in to the CAISO Day-Ahead or Hour-Ahead market.

APPENDIX XIII
FORM OF LOAD MODIFYING RESOURCE DISPATCH PLAN

APPENDIX XIV
PORTFOLIO VALUE SUMMARY

				Load Modification	Capacity Attributes
Customer Service Account Number	Customer name	Inverter Power (kW)	Battery Energy (kWh)	Load Modification Nomination (kW)	Resource Adequacy Nomination (kW)

END OF AGREEMENT



Staff Report – Item 1e

Item 1e: Adopt Resolution to Approve SVCE’s Amended Files and Records Management Policy and Authorize the Chief Executive Officer to Make Future Updates to the Policy and Records Retention Periods in Consultation with General Counsel

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant
Kevin Armstrong, Deputy Director of Administrative Services

Date: 4/12/2023

RECOMMENDATION

Staff recommends the SVCE Board of Directors adopt Resolution 2023-05 to approve the amendments to the FP12 policy, Files & Records Management, and authorize the Chief Executive Officer to make any future updates to the policy and records retention periods with input from General Counsel.

BACKGROUND

The purpose of the files and records management policy is to ensure that SVCE’s records are retained and disposed of in accordance with legal requirements; adherence to the policy strengthens SVCE’s operational effectiveness.

SVCE’s Files & Records Management policy, FP12, was adopted in August 2017. The policy outlined filing guidelines, retention of permanent and non-permanent files, long-term storage, and instruction for record destruction. A detailed Master File Guide Index was identified that listed categories of records and how they would be filed. No amendments have been made to this policy since its adoption.

ANALYSIS & DISCUSSION

In staff’s review of this policy, many of the files listed in the Master File Guide Index did not pertain directly to SVCE’s work and the policy did not reflect staff’s desire to move to digital recordkeeping as opposed to retaining physical copies. In consultation with SVCE’s general counsel, amendments to this policy are being proposed that focus more on electronic records and a more tailored records retention periods table.

Allowing the Chief Executive Officer the ability to make future updates to the retention periods and policy, in consultation with General Counsel, will provide additional flexibility to make updates as new records are identified or changes are needed.

STRATEGIC PLAN

Amending this policy supports SVCE Strategic Plan Goal 21 – “Enable data-driven decision-making across the organization; automate, integrate, and streamline business processes to minimize operational risk and move organization toward industry best practices from its startup phase”.

FISCAL IMPACT

No fiscal impact as a result of amending the current policy.

ATTACHMENTS

1. Resolution 2023-05 Approving SVCE’s Amended Files and Records Management Policy and Authorizing the

Agenda Item: 1e**Agenda Date: 4/12/2023**

Chief Executive Officer to Make Future Updates to the Policy and Records Retention Periods in Consultation with General Counsel

2. Proposed Amended FP12 Policy, Files & Records Management (Clean Copy)
3. Current FP12 Policy, Files & Records Management (Redline with proposed changes)

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION No. 2023-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING SVCE'S AMENDED FILES AND RECORDS MANAGEMENT POLICY AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO MAKE FUTURE UPDATES TO THE POLICY AND RECORDS RETENTION PERIODS IN CONSULTATION WITH GENERAL COUNSEL

WHEREAS, the maintenance of numerous records is expensive, slows document retrieval, and is not necessary after a certain period of time for the effective and efficient operation of the Silicon Valley Clean Energy Authority ("SVCE"); and

WHEREAS, Section 34090 of the Government Code of the State of California provides a procedure whereby any City record which has served its purpose and is no longer required may be destroyed; and

WHEREAS, the State of California has adopted guidelines specifying retention periods for various government records; and

WHEREAS, the Board of Directors of SVCE desire to amend SVCE's Files and Records Management Policy and adopt an updated records retention schedule to ensure efficient and effective maintenance of its various documents and records.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The records of SVCE, as set forth in the Records Retention Periods, attached hereto as "Exhibit A", are hereby authorized to be destroyed as provided by Section 34090 et seq. of the Government Code of the State of California and in accordance with the provision of said schedule upon the request of the Chief Executive Officer or their designee and with the consent in writing of the General Counsel, without further action by the Board of Directors of SVCE.

SECTION 2. With the consent of the Chief Executive Officer or their designee and the General Counsel, updates are hereby authorized to be made to the Files and Records Management Policy and Records Retention Periods without further action by the Board of Directors.

SECTION 3. The term "records" as used herein shall include documents, instructions, books, microforms, electronic files, magnetic tape, optical media, or papers; as defined by the California Public Records Act.

SECTION 4. This resolution shall become effective immediately upon its passage and adoption.

ADOPTED AND APPROVED this 12th day of April 2023, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Scozzola				
City of Cupertino	Director Mohan				
City of Gilroy	Director Hilton				
City of Los Altos	Director Meadows				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Mekechuk				
City of Morgan Hill	Alternate Director Carothers				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Alternate Director Srinivasan				

Chair

ATTEST:

Andrea Pizano, Board Clerk

RECORDS RETENTION PERIODS

Record Series Title	Retention Period	Description/Comments
Accounts payable/receivable	5 years	Ledgers, paid bills, purchase orders, bank statements, checks, and deposit slips, wires, expense reports/reimbursements, uncollectible accounts and write offs, depreciation schedules, 1099 Forms
Invoices	2 years	Vendor invoices for payment
Budget	Permanent	Forecasts & projections, Financial statements (end-of-year trial balances)
Audit	5 years	Financials, controller reports, IT audit reports
Customer Information and Data	5 years	Electronic information and reporting from Director of Customer Care, customer bill analyses, customer consent for third-party disclosures
Insurance records	30 years	Accident reports, claims, policies, workers comp
Loan documents	Permanent	Line/letter of credit documents, applications
Employee Records	10 - 30 years	Offer letter, benefits, evaluations, personnel change request
Recruitment	6 years from close	Employment application, resume, cover letters, job descriptions, interview evaluations
Payroll	7 years	Records and summaries, reports (federal, state, tax), W-2 forms, W-4 forms, garnishments, IR's, retirement plan
Board and Committee Meeting Materials	Permanent	Final Board and Committee Meeting materials, and additional SVCE approved sub-committee materials
Board Approved Decisions	Permanent	Adopted Resolutions, final meeting minutes
Contracts	Expiration +7 years	Leases, agreements, amendments, power supply contracts, etc.
Correspondence (general)	3 years	Email & written correspondence not containing materials related to invoices, budgets, audits, insurance records, loans, personnel recruitment and employee records, board and committee materials, or contracts, marketing or solicitation materials.
Marketing Collateral	7 years	Publications, promotional brochures, flyers, newsletters & alerts
Solicitations	7 years	Request for proposals, bids, quotes, etc.
Non-Disclosure Agreements	7 years	Agreements with advisors, board members or vendors



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Category: FINANCE

FILES & RECORDS MANAGEMENT

I. PURPOSE

The Agency will retain records in an orderly fashion for time periods that comply with legal and governmental requirements and as needed for general business requirements; to outline the methods for filing, retaining, and disposing of business records necessary to support our work (including opinions, resolution of differences, conclusions and research utilized in analysis), our correspondence with customers/clients, our work product and items of continuing significance.

II. SCOPE

This procedure applies to all business documentation generated by the Agency. However, this does not necessarily cover internal or certain day-to-day business correspondence.

Drafts or other documents not utilized should not be retained. Documents and records transmitted as attachments via email should be considered separately from the email messages to which they are attached.

III. POLICY

A. DIGITAL FILES

- Electronic documents and emails shall be maintained on a secure server or secure web site.
- Agency files or information should not be stored on personal electronic devices to the extent possible.
- Employee hard drives shall be password protected.
- Customer correspondence created/maintained for documentation purposes should be stored upon the Customer Records Management (CRM) system whenever possible.
- Collection letters, invoices and other customer correspondence will



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be maintained in CRM when feasible or within pertinent folders where appropriate (i.e., collection letters with collections files).

- Confidential and Sensitive files should be watermarked or include a header noting the words "CONFIDENTIAL" or "SENSITIVE" or "Subject to NDA", or similar notation, whenever possible.

B. PAPER FILES

- Whenever possible, the Agency should maintain records electronically.
- Confidential and sensitive paper records or correspondence should be maintained in file cabinets with locking capability when not in use.
- Certain documents, whenever possible, as a practical matter, shall be stamped, watermarked or headed "CONFIDENTIAL", "SENSITIVE", or "Subject to NDA", or similar notation.
- Files labeled with employee names shall be considered confidential personnel files, and shall be accessed only by those who are in the direct line of supervisory authority, or those who are responsible for payroll or other human resource duties, and shall be accessed on a need-to-know basis.
- Files labeled with an energy counterparty name shall be considered confidential.

C. FILING SYSTEM

- To ensure efficient access, filing centers will be established. To reduce the amount of duplicate and unnecessary record retention, individual desk files should be avoided unless they are used in daily operations. All other departmental or agency records should be filed in the departmental central filing areas.
- Unless necessary, records should only be kept by the originator or sender and not by the receiver to avoid duplicate filing systems.



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D. RECORD RETENTION AND LONG-TERM STORAGE

- Non-permanent physical files will be stored in cardboard file boxes. Each file box will be labeled on the front with the contents, dates covered, and destruction date if applicable. Permanent physical records will be maintained in metal fire-resistant file cabinets.
- Files should be stored only in boxes with similar items, dates and retention periods. This will allow easier access and purging of records. A general rule to keep in mind is that it is better to only half-fill a file box than to file dissimilar types of files in the same box.
- An employee designated by the Chief Executive Officer will be responsible for categorizing and maintaining a listing of records maintained and the location.
- An employee designated by the Chief Executive Officer will be responsible for coordinating the creation, and maintenance of record retention periods, and will maintain and issue the "Records Retention Periods" as appropriate.
- Maintain all files for as long as is necessary but only to the extent they serve a useful purpose or satisfy business or legal requirements. "Records Retention Periods" provides a guide.
- The Chief Executive Officer may make further updates to the Retention Periods, to this Files and Records Management policy, and to any Retention and Destruction Policy.

E. RECORD DESTRUCTION

- An employee designated by the Chief Executive Officer will circulate a listing of file categories to be destroyed to all employees thirty days prior to destruction, for review and comment.
- Three to six months after each year-end, an employee designated by the Chief Executive Officer will proceed with destruction of all files that have exceeded their recognized holding period.
- Destruction of physical files will be performed by an



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independent, outside service for shredding and disposal. Any paper with a social security number, a federal ID number, confidential information or sensitive data, or a client name on it must be destroyed in this manner.

F. DISPOSAL OF RECORDS INTO THE AGENCY'S GENERAL TRASH SERVICE IS NOT ALLOWED

- Electronic documents are destroyed by deleting them from the medium on which they are stored, and then purging the medium itself.
- Email messages not saved for filing in the correspondence file or other appropriate folder should be deleted.

IV. ATTACHMENTS

1. Records Retention Periods

RECORDS RETENTION PERIODS

Record Series Title	Retention Period	Description/Comments
Accounts payable/receivable	5 years	Ledgers, paid bills, purchase orders, bank statements, checks, and deposit slips, wires, expense reports/reimbursements, uncollectible accounts and write offs, depreciation schedules, 1099 Forms
Invoices	2 years	Vendor invoices for payment
Budget	Permanent	Forecasts & projections, Financial statements (end-of-year trial balances)
Audit	5 years	Financials, controller reports, IT audit reports
Customer Information and Data	5 years	Electronic information and reporting from Director of Customer Care, customer bill analyses, customer consent for third-party disclosures
Insurance records	30 years	Accident reports, claims, policies, workers comp
Loan documents	Permanent	Line/letter of credit documents, applications
Employee Records	10 - 30 years	Offer letter, benefits, evaluations, personnel change request
Recruitment	6 years from close	Employment application, resume, cover letters, job descriptions, interview evaluations
Payroll	7 years	Records and summaries, reports (federal, state, tax), W-2 forms, W-4 forms, garnishments, IR's, retirement plan
Board and Committee Meeting Materials	Permanent	Final Board and Committee Meeting materials, and additional SVCE approved sub-committee materials
Board Approved Decisions	Permanent	Adopted Resolutions, final meeting minutes
Contracts	Expiration +7 years	Leases, agreements, amendments, power supply contracts, etc.
Correspondence (general)	3 years	Email & written correspondence not containing materials related to invoices, budgets, audits, insurance records, loans, personnel recruitment and employee records, board and committee materials, or contracts, marketing or solicitation materials.
Marketing Collateral	7 years	Publications, promotional brochures, flyers, newsletters & alerts
Solicitations	7 years	Request for proposals, bids, quotes, etc.
Non-Disclosure Agreements	7 years	Agreements with advisors, board members or vendors



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FILES & RECORDS MANAGEMENT

I. PURPOSE

The Agency will retain records in an orderly fashion for time periods that comply with legal and governmental requirements and as needed for general business requirements; to outline the methods for filing, retaining, and disposing of business records necessary to support our work (including opinions, resolution of differences, conclusions and research utilized in analysis), our correspondence with customers/clients, our work product and items of continuing significance.

II. SCOPE

This procedure applies to all business documentation generated by the Agency. However, this does not necessarily cover internal or certain day-to-day business correspondence.

Drafts or other documents not utilized should not be retained. Documents and records transmitted as attachments via email should be considered separately from the email messages to which they are attached.

III. POLICY

A. DIGITAL FILES

- Electronic documents and emails shall be maintained on a secure server or secure [SharePoint](#) web site.
- ~~• Sensitive or confidential information should be maintained in files and folders which are restricted by password to allow access only to authorized individuals or on an as needed basis.~~
- Agency files or information should not be stored on personal electronic devices to the extent possible.
- Employee hard drives shall be password protected.
- Customer correspondence created/maintained for documentation



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purposes should be stored upon the Customer Records Management (CRM) system whenever possible.

- Collection letters, invoices and other customer correspondence will be maintained in CRM when feasible or within pertinent folders where appropriate (i.e., collection letters with collections files).
- ~~Account numbers should be redacted to primary minus the last 3 digits for all correspondence.~~
- Confidential and Sensitive files should be watermarked or include a header noting the words "CONFIDENTIAL" or "SENSITIVE" or "Subject to NDA", or similar notation, whenever possible.

B. PAPER FILES

- Whenever possible, the Agency should maintain records electronically.
- Confidential and sensitive paper records or correspondence should be maintained in file cabinets with locking capability when not in use.
- Certain documents, whenever possible, as a practical matter, shall be stamped, watermarked or headed "CONFIDENTIAL", "SENSITIVE", or "Subject to NDA", or similar notation.
- Files labeled with employee names shall be considered confidential personnel files, and shall be accessed only by those who are in the direct line of supervisory authority, or those who are responsible for payroll or other human resource duties, and shall be accessed on a need-to-know basis.
- Files labeled with an energy counterparty name shall be considered confidential.

A.C. FILING SYSTEM

- To ensure efficient access, filing centers will be established. To reduce the amount of duplicate and unnecessary record retention, individual desk files should be avoided unless they are used in daily operations. All other departmental or agency



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records should be filed in the departmental central filing areas.

- Unless necessary, records should only be kept by the originator or sender and not by the receiver to avoid duplicate filing systems.



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- ~~The following filing guidelines should be adhered to optimize filing efficiency and records access:~~
 - ~~All file cabinets and files should follow recognized rules of order, such as Left to Right, Top to Bottom, Front to Back, and in the case of chronological records, Newest to Oldest.~~
 - ~~File markers or label headings should always be placed at the beginning or front of a file or group of files.~~
 - ~~Alphabetical files should always be filed under broad topical categories. Files should never be filed under individual employee names (except Human Resources records) to avoid confusion and re-filing in the event of turnover. Files should always be filed under the "proper" or agency names whenever appropriate. In the case of individuals, files should be maintained according to the person's last name, then first name and middle initial.~~
 - ~~Alphanumeric codes should be attached to colored end tabs of all file sets to show type of file by subject area and sub-category. For instance, all files dealing with Accounting will have a green end tab on the lateral file folder with the alpha code of AC followed by a three digit numeric code to designate the category (i.e. Financial Planning is AC-200, General Accounting is AC-300, Payroll is AC-340, etc.). Payroll is a function of Accounting thus the AC, payroll is a function of General Accounting (under Accounting) thus the 300 series numeric, and under General Accounting the Payroll file is series number 40, which translates to a file of AC-340. Refer to "Master File Guide Index."~~
 - ~~Extra care should be used for sensitive or private information. Agency financial data or personnel records that contain performance reviews, salary information, or any health-related information should be kept in a secure area with limited access to only those that have a "need to know," such as the Chief Executive Officer or Director of Administration and Finance.~~
 - ~~Documents attached to and transmitted by email should be stored in machine-readable format in the Agency's electronic~~



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~~document management system within the appropriate client folders.~~

B.D. RECORD RETENTION AND LONG-TERM STORAGE

- Non-permanent physical files will be stored in cardboard file boxes. Each file box will be labeled on the front with the contents, dates covered, and destruction date if applicable. Permanent physical records will be maintained in metal fire-resistant file cabinets.
- Files should be stored only in boxes with similar items, dates and retention periods. This will allow easier access and purging of records. A general rule to keep in mind is that it is better to only half-fill a file box than to file dissimilar types of files in the same box.
- ~~An employee designated by the Chief Executive Officer The Administrative Analyst~~ will be responsible for categorizing and maintaining a listing of records maintained and the location.
- ~~The Administrative Analyst, or other~~An employee designated by the Chief Executive Officer, will be responsible for coordinating the creation, amendment, and maintenance of record retention periods, and will maintain and issue the "Records Retention Periods" as appropriate.
- Maintain all files for as long as is necessary but only to the extent they serve a useful purpose or satisfy business or legal requirements. "Records Retention Periods" provides a guide.
- The Chief Executive Officer may make further updates to the Retention Periods, to this Files and Records Management policy, and to any Retention and Destruction Policy.

C.E. RECORD DESTRUCTION

- ~~The Administrative Analyst, or other~~An employee designated by the Chief Executive Officer, will circulate a listing of file categories to be destroyed to all employees thirty days prior to destruction, for review and comment. The actual listing of records destroyed will be maintained permanently for future

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reference.

- Three to six months after each year-end, ~~the Administrative Analyst~~ an employee designated by the Chief Executive Officer will proceed with destruction of all files that have exceeded their recognized holding period.
- Destruction of ~~the~~ physical files will be performed by an independent, outside service for shredding and disposal. Any paper with a social security number, a federal ID number, confidential information or sensitive data, or a client name on it must be destroyed in this manner.

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~~D.F.~~ DISPOSAL OF RECORDS INTO THE AGENCY'S GENERAL TRASH SERVICE IS NOT ALLOWED

- Electronic documents are destroyed by deleting them from the medium on which they are stored, and then purging the medium itself.
- Email messages not saved for filing in the correspondence file or other appropriate folder should be deleted.

IV. ATTACHMENTS

~~1.-Master File Guide Index~~

~~2.1.~~ Records Retention Periods

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MASTER FILE GUIDE INDEX

AC — ACCOUNTING

AC-100 — Accounts Administration
AC-200 — Financial Planning
AC-300 — General Accounting
AC-310 — Checking Account Register
AC-320 — Accounts Payable
AC-330 — Accounts Receivable
AC-340 — Payroll
AC-350 — Local, State, Federal taxes {FUTA, FICA, etc.}
AC-360 — Banking Services
AC-370 — Fixed Assets
AC-400 — Employee Benefit Programs
AC-500 — Employee Expense Accounts
AC-600 — Agency Loan Management
AC-700 — Grants Account Management
AC-800 — Purchasing
AC-900 — Open

AD — ADMINISTRATION

AD-100 — General
AD-200 — Organizational Manual
AD-300 — Organizational Charts
AD-400 — Agency Correspondence Manual
AD-500 — Policies and Procedures
AD-600 — Records Management and Retrieval
AD-700 — Chief Executive Officer Administrative Memorandums
AD-800 — Interoffice Staff Administrative Memorandums
AD-900 — Open

BU — BUSINESS

BU-100 — Feasibility Study
BU-200 — Project Management
BU-300 — Business Executive Summaries

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CS — COMPUTER INFORMATION SYSTEMS

- CS-100 — General
- CS-200 — Equipment
- CS-300 — Operation and Maintenance
- CS-400 — Training in Systems Operation
- CS-500 — Open

PS — POWER SUPPLY

- PS-100 — General
- PS-200 — Contracts
- PS-300 — Power Purchase Agreements
- PS-400 — Risk Management
- PS-500 — Request for Information
- PS-600 — Request for Quote/Price
- PS-700 — Open
- PS-800 — Open

IN — INSURANCE

- IN-100 — General Administration of Insurance
- IN-200 — Plant and Equipment Policies
- IN-300 — Agency Officer Policies
- IN-400 — Agency Vehicles Policies
- IN-500 — Health Program Policies
- IN-600 — Life Insurance Programs for Employees
- IN-700 — Employment Coverage
- IN-800 — Data Breach Coverage
- IN-900 — Open

LG — LEGAL

- LG-100 — General
- LG-200 — Reports
- LG-300 — Contracts
- LG-400 — Litigation
- LG-500 — Disputes
- LG-600 — Legal Personnel Issues

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~~LG-700 — Agreements/Partnerships~~
~~LG-800 — Open~~

~~MA — MARKETING~~

~~MA-100 — General~~
~~MA-200 — Reports/Studies~~
~~MA-300 — Marketing Plans~~
~~MA-400 — Customer Relations~~
~~MA-500 — Programs~~

~~OF — OFFICE MANAGEMENT~~

~~OF-100 — General~~
~~OF-200 — Procedures~~
~~OF-300 — Equipment/Furnishings/Telecommunications~~
~~OF-400 — Information Processing/Communications Procedure~~
~~OF-500 — Property Lease/Management Agreement~~
~~OF-600 — Fax/Reproduction/Printing Procedures~~
~~OF-700 — Protocol to Visitors~~
~~OF-800 — Building Maintenance~~
~~OF-900 — Open~~

~~PE — PERSONNEL~~

~~PE-100 — General~~
~~PE-200 — Reports~~
~~PE-300 — Employee Records~~
~~PE-400 — Organizational Charts~~
~~PE-500 — Recruiting~~
~~PE-600 — Training~~
~~PE-700 — Benefit Programs~~
~~PE-800 — Open~~
~~PE-900 — Open~~

~~PP — PERMITS AND PLANS~~

~~PP-100 — Permits~~
~~PP-200 — Reports~~
~~PP-300 — Open~~

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PP-400 — Open

PP-500 — Open

PR — PUBLIC RELATIONS

PR-100 — General

PR-200 — Reports and Studies

PR-300 — Agency Releases

PR-400 — List of Industry Contacts

PR-500 — Open

RG — REGULATORY DATA

RG-100 — General

RG-200 — Reports

RG-300 — Correspondence

RG-400 — Acts/Laws/Bills

RG-500 — Regulations

RG-600 — Agreements

RG-700 — Guidelines/Policies/Resolutions

RG-800 — Open

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RECORDS RETENTION PERIODS

Accident reports and claims (settled cases)	7 years
Accounts payable ledgers, schedules, and trial balances	7 years
Accounts receivable ledgers, schedules, and trial balances	7 years
Assignments	3 years
Audit reports of accountants	Permanently
Bank reconciliations	2 years
Bank statements, cancelled checks, and deposit slips	7 years
Cash books	Permanently
Cash receipts and disbursements	7 years
Chart of accounts	Permanently
Checks (cancelled, all other)	7 years
Checks (cancelled, for important payments, i.e. taxes, property purchases, special contracts, etc. File checks with the transaction papers)	Permanently
Contracts and leases (expired)	7 years
Contracts and leases still in effect	Expiration + 7 years
Agency records and minutes	Permanently
Correspondence (legal and important matters only)	Permanently
Correspondence general	3 years
CPE records	7 years (after term)
Credit Applications (Business)	1 year (after notification)
Depreciation schedules	7 years
Duplicate deposit slips	1 year
Electronic fund transfer documents	7 years
Employee personnel records (after termination)	7 years



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Employment applications.....	3 years
Equipment records & invoices	5 years (after disp)
Expense reports, analyses and distribution schedules.....	7 years
Expired contracts and notes receivable	7 years
Expired purchase contracts.....	7 years
Federal, state and local tax returns	Permanently
Financial statements (end of year trial balances)	Permanently
Fixed asset records and appraisals	Permanently
Forecasts & projections.....	7 years
Forms W-4	7 years
Garnishments.....	3 years
General Ledgers (end of year trial balances)	Permanently
I-9s (after termination).....	2 years
Insurance records, current accident reports, claims, policies, etc.	Permanently
Interim and year end financial statements and trial balances	Permanently
Invoices	7 years
Journals	Permanently
Licenses	Permanently
Litigation support files	3 years
Loan documents, notes.....	Permanently
Marketing publications, promotional brochures, newsletters & alerts	7 years
Minute books of directors, including bylaws and charter.....	Permanently
Monthly trial balances.....	Permanently
Paid bills and vouchers	7 years
Payroll journals	7 years



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Payroll records and summaries.....	7 years
Payroll reports (federal & state)	7 years
Physical inventory records.....	7 years
Physical inventory tags	7 years
Property records including costs, depreciation schedules, blueprints, plans	Permanently
Property titles and mortgages	Permanently
Purchase journals	7 years
Purchase orders	7 years
Receiving sheets.....	2 years
Retirement plan (401 (a) plan info).....	Permanently
Requisitions	7 years
Sales journals	7 years
Sales records.....	7 years
Subsidiary ledgers	7 years
Tax exemption documents, including application for exemptions .	Permanently
Uncollectible accounts and write offs.....	7 years
Vendors' invoices & paid bills.....	7 years
Voucher for payments to vendors, employees, etc. (includes all allowances and reimbursement of employees, officers)	7 years
W 4 forms.....	4 years
W 2 or 1099 forms.....	7 years
Workman's comp documents.....	11 years



Staff Report – Item 1f

Item 1f: Receive Q1 2023 Decarbonization Programs Update

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy
 Nupur Hiremath, Manager of Community Programs

Date: 4/12/2023

RECOMMENDATION

Staff recommends the Board accept the Q1 2023 Update of the Decarbonization Strategy & Programs Roadmap.

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, SVCE established a decarbonization strategy and programs roadmap (abbrev. "Roadmap"). In December 2018, the Board approved the Roadmap, and since that time, staff have been working on implementation.

ANALYSIS & DISCUSSION

Attachment 1 is the most recent quarterly update, covering January through March 2023. The quarterly update includes a table with a summary of updates and next steps for each initiative.

STRATEGIC PLAN

This item supports SVCE's 2022-2023 Strategic Plan Goal 10, to "coordinate development of decarbonization and resilience strategy, lead design of local policy, and design and deploy programs," to support achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030.

FISCAL IMPACT

Accepting the Q1 2023 Update of the Decarbonization Strategy & Programs Roadmap has no fiscal impact.

ATTACHMENTS

1. Decarbonization Strategy & Programs Roadmap – Q1 2023 Update

Decarbonization Strategy & Programs Roadmap

Q1 2023 Update

April 12, 2023 BOD Meeting

<i>Sector</i>	<i>Program</i>	<i>Q1 2023</i>	<i>Q2 2023 Outlook</i>
Power Supply	C&I Clean Power Offerings Develop, market and sell additional SVCE power offerings to address large C&I customers seeking to buy clean power at competitive rates.	<ul style="list-style-type: none"> • Launch 24x7 carbon-free product. • Operationalize billing and carbon-free energy (CFE) tracking relative to performance of 24/7 product. • Prospect for additional clean power offerings candidates. 	<ul style="list-style-type: none"> • Close EcoInvest contract with large corporate customer. • Streamline operations of billing and CFE relative to 24/7 product. • Develop framework for standardized key accounts outreach cadence. • Prospect for additional clean power offerings candidates.
Built Environment	Reach Codes Provide model energy code supportive of all-electric design and EV infrastructure to member agencies along with consultant support.	<ul style="list-style-type: none"> • Provided final support to Milpitas in their adoption process. • Provided information to Los Altos for their reach code redesign. • Reviewed consultant materials developed to support reach code implementation. 	<ul style="list-style-type: none"> • Monitor the code development process and implementation by member agencies as needed. • Begin laying groundwork for future efforts.
	Electric Showcase Awards Showcase electric retrofit buildings in preparation for existing building policy conversations with member agencies.	<ul style="list-style-type: none"> • Applications opened in March 2023. • Reviewed applications received. 	<ul style="list-style-type: none"> • Select and announce finalists. Provide awards. • Develop case studies and videos.
	FutureFit Heat Pump Water Heaters Provide incentives for electric heat pump water heaters and service panel upgrades to residents using natural gas currently.	<ul style="list-style-type: none"> • Close HPWH program by March 31 as it has been rolled into the FutureFit Homes program. • Straggling customers permitted to complete projects under existing incentive structure. 	<ul style="list-style-type: none"> • (COMPLETED) •

<i>Sector</i>	<i>Program</i>	<i>Q1 2023</i>	<i>Q2 2023 Outlook</i>
	Permit Modernization Effort Benchmark and streamline member agency's permitting and inspection processes to identify barriers and opportunities to electrification.	<ul style="list-style-type: none"> Finalized jurisdiction interviews. Began contractor interviews. Continued to inform Building Officials about legislative and regulatory requirements. Supported jurisdictions in applying for State grants. Began development of program recommendations. 	<ul style="list-style-type: none"> Finalize contractor interviews. Identify prioritized menu of assistance programs desired by jurisdictions. Oversee development of report detailing program recommendations. Continue to inform Building Officials about legislative and regulatory requirements. Support jurisdictions in applying for State grants.
	Building Decarb Joint Action Plan Develop a joint action plan with member agencies to prioritize strategies and programs to advance building decarbonization.	<ul style="list-style-type: none"> (COMPLETED) 	
	Community Resilience Program Increase the individual and collective capacity of SVCE and our member agencies to reduce the adverse impacts of power outages.	<ul style="list-style-type: none"> Continue to provide technical assistance to member agencies to identify potential capex projects. Updating Community Resilience website to include developing and finished projects. Assessing Resilient Site Selection Tool hosting capabilities. 	<ul style="list-style-type: none"> Launch new website and Community Resilience Framework. Close technical assistance and agreement with Buro Happold.
	FutureFit Fundamentals Provide financial relief to contractors by expanding their knowledge of electrification technologies.	<ul style="list-style-type: none"> 92 contractors have completed the course. Assessed responses from mid-program survey to inform program next steps and contractor engagement goals. Developing additional contractor incentive. 	<ul style="list-style-type: none"> Continue to enroll contractors into course. Explore and expand digital outreach with new marketing strategies.
	CRCR Bill Relief Provide immediate bill relief to residential CARE/FERA customers, and to qualifying small business customers.	<ul style="list-style-type: none"> Begin process to roll out 2023 low-income credits 	<ul style="list-style-type: none"> Continue roll out.
	FutureFit Homes & Buildings 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.	<ul style="list-style-type: none"> Expanded M&O activities, including SVCE newsletter, direct emails, and social media posts. Up to 160 active reservations. Drafted concierge RFP, which will expand FFH support to include technical assistance & electrification assessments. 	<ul style="list-style-type: none"> Ongoing program updates, including rebate into layering, clarification on prewiring requirements, etc. Issue concierge RFP & evaluate responses. Select consultant for implementation.

Sector	Program	Q1 2023	Q2 2023 Outlook
	Regional Coordination SVCE will initiate regular regional stakeholder convenings to coordinate program alignment across building decarbonization workstreams.	<ul style="list-style-type: none"> Began existing building decarbonization stakeholder meetings with community leaders. Held in-person meeting for member agencies – 11 jurisdictions attended. Began plans for elected officials joint event with the Cities Association 	<ul style="list-style-type: none"> Develop formalized meeting structure for ongoing coordination.
	Accessible Financing Assess feasibility of financing mechanisms to unlock equitable financing for energy efficiency and electrification across the region, particularly for low-income communities.	<ul style="list-style-type: none"> Continued pilot planning with newly selected program operator and identify billing system needs for tariff charges. Ongoing support of CPUC Clean Energy Finance proposal 	<ul style="list-style-type: none"> Continue pilot planning including data share agreement with TECH and revised pilot budget. Anticipating proposed decision from CPUC on the CEF proposal.
	Existing Building Policy Experimentation Assess and support potential policy levers Member Agencies can explore to mitigate emissions from existing buildings.	<ul style="list-style-type: none"> Consultant team held stakeholder meetings to gather input on program design. Program launch pushed back to June. 	<ul style="list-style-type: none"> Program launch tentative for June.
	Feasibility Assessment for Natural Gas Phase Out By 2045 Carry out a feasibility assessment to identify technical, legal and economic barriers and opportunities for phasing out natural gas service by 2045, in the SVCE service territory.	<ul style="list-style-type: none"> Conducting internal needs assessment to determine what analysis is needed by when. Assessing potential for local policies to contribute to carbon reduction in buildings. 	<ul style="list-style-type: none"> Create and plan to distribute RFP for consultant in 2023 Q3 or Q4.
Mobility	EV Infrastructure Strategy & Plan Develop a near- to mid-term strategy for EV infrastructure and a set of program implementation plans.	<ul style="list-style-type: none"> (COMPLETED) 	
	California Electric Vehicle Infrastructure Project (CALeVIP) Work with California Energy Commission to launch a regional CALeVIP project.	<ul style="list-style-type: none"> Opened eligibility for Year 2 and Year 3 SVCE funds (total \$1.5M) to expand to DCFC in addition to L2. Program operator began processing waitlisted applications (DCFC and combination DCFC + L2) given the shift in eligibility. 	<ul style="list-style-type: none"> Continue to work with program operator on completing existing projects with reserved funds.
	Priority Zone DCFC Competitive application to receive an additional incentive (on top of CALeVIP) for DCFC in “priority zones” that support nearby SVCE-designated multifamily housing clusters.	<ul style="list-style-type: none"> Selected 5 sites to award DCFC installation incentives and worked with site hosts to sign agreements. 	<ul style="list-style-type: none"> Announce DCFC sites once agreements are executed. Begin DCFC installation process for selected sites. Collaborate with awardees on pilot preferred pricing options for MUD residents living nearby DCFC installation sites.

Sector	Program	Q1 2023	Q2 2023 Outlook
	MUD & S/M Workplace Technical Assistance (FutureFit Assist) Technical assistance and help applying for pertinent CAlLeVIP rebates for charging at multifamily housing and small and medium workplace properties.	<ul style="list-style-type: none"> Enrolled 2 new commercial and 1 new multifamily properties in the program. Continued to site visits and drafted solution reports for participants. 	<ul style="list-style-type: none"> Conduct ongoing outreach. Continue to develop site assessments for participating properties. Continue to connect customers to relevant rebates and incentive opportunities.
	MUD Charging Incentives Develop incentive program for EV charging at hard-to-reach multifamily properties.	<ul style="list-style-type: none"> Since launch, 17 MUD properties have reserved funds for a total of 138 L1 and L2 ports. Updated program terms and increased incentive levels available to participants. Added new incentive category for new construction affordable housing meeting reach code requirements. 	<ul style="list-style-type: none"> Continue outreach to eligible MUD properties. Promote new incentive category to affordable housing developers. Track progress of applications. Adjust program terms as needed.
	Fleet Electrification Grants Competitive application for SVCE's fleet electrification planning support and funding for site upgrades. Targeting a broad set of fleet types, to create widely applicable fleet electrification planning templates	<ul style="list-style-type: none"> Continue to identify private fleets for program. Program launched and began work with identified public fleets. Program has reached its target of five public fleets. 	<ul style="list-style-type: none"> Continue to identify private fleets for program. Facilitate public fleets moving through the fleet electrification planning process.
	Silicon Valley Transportation Electrification Clearinghouse (SVTEC) Regional group of key stakeholders focused on information sharing, solving critical issues, and attracting external funding to the SVCE community in support of EV infrastructure deployment.	<ul style="list-style-type: none"> Assessed grant opportunities. Interviewed EVI companies on permitting challenges. 	<ul style="list-style-type: none"> Host quarterly meeting.
Energy Efficiency & Grid Integration	GridShift: EV Charging Managed EV charging app that optimizes charging to reduce associated costs and emissions. In-app "events" support additional emission reductions and load flexibility	<ul style="list-style-type: none"> Set enrollment targets for 2023. Ran a month-long sign-up incentive promotion. Now at 1,000 EVs! Continued marketing efforts. Scoped out charger rebate requirements. 	<ul style="list-style-type: none"> Launch charger rebate. Continue marketing efforts. Wrap up low-carbon events season. Launch Critical GridShift Hours season.

Sector	Program	Q1 2023	Q2 2023 Outlook
	Other Virtual Power Plant Programs Support “virtual power plants” (VPPs) made up of cloud-based aggregations of customer-sited resources to support grid integration and monetize value from connected, controllable loads	<ul style="list-style-type: none"> • Explored thermostat VPP concept and approach for near-term options. • Continued work with Sunrun on dispatch plan and contract discussions. • Explored next steps for 2023 actions and worked on SVCE’s vision for the “grid of the future.” 	<ul style="list-style-type: none"> • Issue solicitation and request for information for thermostat VPP to learn more about options. • Work on SVCE’s vision for the “grid of the future” to shape future VPP efforts and program designs. • Finalize Sunrun materials.
Education & Outreach	Customer Resource Center (eHub) Develop online customer resource center to enable engagement, education and action related to clean electricity, EVs and home electrification.	<ul style="list-style-type: none"> • 208,561 Unique eHub Engagements since launching in Sept. 2020 to Feb. 2023. • eHub Metrics Feb.1 - Feb.28, 2023: <ul style="list-style-type: none"> - 855 unique visits to SVCE eHub webpages - 379 unique visits to the EV Assistant tool - 254 unique visits to the Solar+Battery Assistant tool - 3,541 unique visits to the Appliances Assistant tool • Ended ‘Go Electric Holiday Sweepstakes’ (12/19/2022-1/18/2023) where 4,840 customers participated and there were 24,095 actions completed and 114,152 entries. 7/10 winners chose the \$600 energy bill credit as their prize and 3/10 winners chose an e-bike as their prize. • Delivered email campaigns: <ul style="list-style-type: none"> - ‘Go Electric’ Holiday Sweepstakes (Dec/Jan) - Community Summary Email (Feb) - All-Electric Yard Care Promotion (Mar) - Information about new Net Billing Tariff (Mar) • Launched ‘All-Electric’ Yard Care Promotion on 2/10/2023 - 5/31/2023. • Launched Used EV tool on the EV Assistant in February. 	<ul style="list-style-type: none"> • Continue running the Yard Care Promotion until May 31st 2023. • Continue tracking eHub engagement metrics. • Developing HPWH concierge service and EV Charger concierge service with Electrum. • Planning to launch a ‘Go Electric’ Summer Kickoff Sweepstakes in mid-May and Summer Resiliency Promotion in mid-June. • Upcoming monthly emails to educate customers on the resources available on eHub: <ul style="list-style-type: none"> - Yard Care Promotion Reminder - Go Electric campaign for Earth Month - Used EV tool on the EV Assistant - ‘Go Electric’ Summer Kickoff Sweepstakes - HPWH Assistant Launch - Summer Resiliency Promotion <p><i>Note: Engagements are driven largely by marketing campaigns delivered within the quarter. Distribution of metrics will vary.</i></p>
	Community Engagement Grants Partner with local organizations in hard-to-reach customer segments to promote SVCE offerings and programs	<ul style="list-style-type: none"> • Identify next steps for program implementation. 	<ul style="list-style-type: none"> • Continue grant administration.

<i>Sector</i>	<i>Program</i>	<i>Q1 2023</i>	<i>Q2 2023 Outlook</i>
	Portable Batteries for Medical Baseline Customers Pilot program to deploy ~50 portable batteries to qualified customers who rely on power for medical equipment.	<ul style="list-style-type: none"> • Sent out 2 emails, 2 mailers, and a round of phone calls to the 50 customers who qualify for the pilot program. • 14 batteries claimed so far. 	<ul style="list-style-type: none"> • Sending out final email April with “heat season” messaging. • Delivering more batteries in the next few weeks. • If participation continues to stay static, we will open it up to a larger audience.
Innovation	Innovation Partners Engage with key strategic partners to participate in the local innovation ecosystem and provide a voice for SVCE customers and the decarb mission.	<ul style="list-style-type: none"> • No planned activities for Q1. 	<ul style="list-style-type: none"> • No planned activities for Q2.
	Innovation Onramp Provide small grants to support innovation through pilot projects with external partners	<ul style="list-style-type: none"> • Wrapping up final deliverable for NeoCharge pilot, the last active I/O pilot. 	<ul style="list-style-type: none"> • No planned activities for Q2.



Staff Report – Item 1g

Item 1g: Authorize the Chief Executive Officer to Execute Amendment to Agreement with Pisenti & Brinker, LLP for Financial Audit Services

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services
Kevin Armstrong, Deputy Director of Administrative Services

Date: 4/12/2023

RECOMMENDATION

Staff recommends that the Board authorize the CEO to execute an amendment to the current agreement with Pisenti & Brinker, LLP to extend the term through September 30, 2027, and increase compensation not to exceed limit to \$180,450.

BACKGROUND

Financial Policy #1 ("FP1") states that an independent certified public accountant shall perform an annual audit of basic financial statements that are accompanied by required supplemental information. Pisenti & Brinker, LLP performed SVCE's audits for Fiscal Years 2016 - 2021 under an earlier agreement.

FP1 also states that audit services shall be competitively bid at least every five years. To comply with FP1, in mid-2022, staff conducted an open Request for Proposals for audit services, per the requirements. After evaluating four proposals, staff recommended selecting Pisenti & Brinker, LLP from the pool of proposals and the Board approved the current agreement at the September 14, 2022, Board meeting. As Pisenti & Brinker, LLP was required to transition audit partners under California State Law, staff recommended a single-year term, intending to return later for an amendment to extend the term, if performance warranted.

ANALYSIS & DISCUSSION

Staff recommends this amendment to the audit agreement and the extension of the term for an additional four years, based on the continued success of working Pisenti & Brinker, LLP. The institutional knowledge the Independent Auditor has gained from SVCE combined with the familiarity of the Community Choice Aggregator ("CCA") model by performing audit services for other CCA's results in an efficient audit process.

This recommendation to extend the term of the agreement complies with Board Policy FP1, and staff will plan to hold a new competitive solicitation for audit services at the end of this agreement.

STRATEGIC PLAN

The recommendation supports the financial goals of the strategic plan.

ALTERNATIVE

Staff is open to alternatives from the Board or the Pubic.

Agenda Item: 1g**Agenda Date: 4/12/2023**

FISCAL IMPACT

The current agreement with Pisenti & Brinker, LLP is for a total of \$32,900 and it expires on September 30, 2023. This amendment will extend the term of the contract to September 30, 2027, and increase the contract amount by \$147,550, to a new contract total of \$180,450. The recommendation results in a fiscal impact of \$33,950 to Fiscal Year 2023-24, \$35,050 to Fiscal Year 2024-25, \$36,200 to Fiscal Year 2025-26, \$37,350 to Fiscal Year 2026-27, with an additional \$5,000 contingency for additional unexpected meetings, letters, and filings. All future expenditures are subject to continued Board funding approval in each Fiscal Year budget.

ATTACHMENTS

1. Amendment to the current agreement with Pisenti & Brinker, LLP
2. Existing agreement with Pisenti & Brinker, LLP

FIRST AMENDMENT TO AGREEMENT WITH PISENTI & BRINKER, LLP

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and PISENTI & BRINKER, LLP entered into that certain agreement entitled FINANCIAL AUDIT SERVICES, effective on September 14, 2022, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and PISENTI & BRINKER, LLP have determined it is in their mutual interest to amend certain terms of the Original Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. Term Section of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on September 15, 2022, and shall terminate on September 30, 2027, unless terminated earlier as set forth herein.

2. Compensation to Consultant Section of Original Agreement shall be amended to read as follows:

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one hundred eighty thousand, four hundred and fifty dollars (\$180,450.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

3. Exhibit C Compensation Section of Original Agreement shall be amended to read as follows:

Authority shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of one hundred eighty thousand, four hundred and fifty dollars (\$180,450.00) as set forth below. Any work performed, or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Amended Values

Fiscal periods ending	Financial Statement Audit (incl Management Letter)	Single Audit (if necessary)	Total Proposed Fees
September 30, 2022	\$27,600	\$5,300	\$32,900
September 30, 2023	\$28,650	\$5,300	\$33,950
September 30, 2024	\$29,750	\$5,300	\$35,050

September 30, 2025	\$30,900	\$5,300	\$36,200
September 30, 2026	\$32,050	\$5,300	\$37,350
Contingency		\$5,000	\$5,000
TOTAL			\$180,450

4. This Amendment shall be effective on April 13, 2023.

5. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.

6. This Amendment 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.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.

RECOMMENDED FOR APPROVAL

Amrit Singh, CFO and Director of Administrative Services

CONSULTANT NAME
PISENTI & BRINKER, LLP

By: _____
Name: _____
Title: _____
Date: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _____

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
PISENTI & BRINKER, LLP
FOR
FINANCIAL AUDIT SERVICES**

THIS AGREEMENT ("Agreement"), is entered into this 14th day of September, 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and Piseni & Brinker, LLP, a California corporation whose address is 3562 Round Barn Circle, Suite 200, Santa Rosa, CA 95403 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

A. Authority is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*) ("Act") with the power to conduct its business and enter into agreements.

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. Authority and Consultant desire to enter into an agreement for financial audit services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on September 15, 2022, and shall terminate on September 30, 2023, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Thirty-two thousand, nine hundred dollars (\$32,900.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

Consultant and Authority agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area under similar circumstances and in a manner reasonably satisfactory to Authority and agrees that all services shall be performed by qualified and experienced personnel. Consultant shall be responsible to Authority for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant shall correct the errors at no additional charge to Authority by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by Authority, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, Authority may deduct the cost of such correction from any retention amount held by Authority or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

6. **INDEPENDENT PARTIES**

Authority and Consultant intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by Authority to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from Authority to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant. Consultant shall indemnify and hold harmless Authority and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of Authority officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. Authority shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this section.

7. **NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

In the performance of this Agreement, Consultant, and any subconsultant under the Consultant, 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, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. Consultant agrees to accept responsibility for loss or damage to any person or entity, including the Authority, and to defend, indemnify, hold harmless, and release the Authority, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses, that may be asserted by any person or entity, including Consultant, arising out of or in connection with the negligent performance or willful misconduct of Consultant hereunder, whether or not there is concurrent negligence on the part of the Authority, but excluding liability arising out of or due to the Authority's active negligence or willful misconduct. This indemnification obligation is limited to the total professional fees paid to and/or incurred by Consultant hereunder; provided, however, that such indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers compensation acts, disability benefits acts, or other employee benefit acts. The parties hereto understand and agree that the foregoing is not intended to abrogate, limit or violate any terms and conditions of Consultant's existing general and professional liability insurance coverages, nor reduce or limit the amount otherwise payable from such policies relating to or on account of a claim falling within the scope of this section.

B. Intellectual Property Indemnification. Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights"), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party's IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation.

C. The acceptance of the services by Authority shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

D. Consultant's indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

10. **INSURANCE**

A. General Requirements. On or before the commencement of the term of this

Agreement, Consultant shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant's indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the Authority by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Authority with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. Failure to Secure or Maintain Insurance. If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, Authority shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. Authority, its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Sufficiency of Insurance. The insurance limits required by Authority are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

11. CONFLICT OF INTEREST

Consultant 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 conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the Authority Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this section into any subcontract that Consultant executes in connection with the performance of this Agreement. Consultant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff Authority, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. **PROHIBITION AGAINST TRANSFERS**

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Authority. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from Authority under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Authority by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL**

Unless prior written consent from Authority is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and Authority in the same manner and

to the same extent as Consultant is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Authority.

14. **REPORTS**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of Authority. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Authority the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of Authority, and all publication rights are reserved to Authority. Consultant may retain a copy of any Report furnished to the Authority pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by Authority in execution or implementation of: (1) The original project for which Consultant was hired; (2) Completion of the original project by others; (3) Subsequent additions to the original project; and/or (4) Other Authority projects as Authority deems appropriate in its sole discretion.

C. Consultant shall, at such time and in such form as Authority may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant without prior approval by Authority.

F. Authority shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

15. **RECORDS**

Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Authority that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of Authority or its designees at all proper times, and gives Authority the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Consultant receives final payment from Authority for all services required under this agreement

16. **PARTY REPRESENTATIVES**

The Chief Executive Officer ("Authority Representative") shall represent the Authority in

all matters pertaining to the services to be performed under this Agreement. Kellin Gilbert (Consultant Representative”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. CONFIDENTIAL INFORMATION AND DOCUMENTS

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the Authority Representative or unless requested in writing by the Authority Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the Authority. Response to a subpoena or court order shall not be considered “voluntary,” provided Consultant gives Authority notice of such court order or subpoena.

B. Consultant shall promptly notify Authority should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the Authority. Authority may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Authority and to provide Authority with the opportunity to review any response to discovery requests provided by Consultant. However, Authority’s right to review any such response does not imply or mean the right by Authority to control, direct or rewrite the response.

C. In the event Authority gives Consultant written notice of a “litigation hold”, then as to all data identified in such notice, Consultant shall, at no additional cost to Authority, isolate and preserve all such data pending receipt of further direction from the Authority.

D. Consultant agrees to comply with the confidentiality and data protection provisions set forth in Exhibit “E,” attached hereto and incorporated herein by this reference.

E. Consultant’s covenants under this section shall survive the expiration or termination of this Agreement.

18. NOTICES

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant’s and Authority’s regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO AUTHORITY:
333 W. El Camino Real
Suite 330
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:
Kellin Gilbert, CPA, Partner
Pisenti & Brinker, LLP
3562 Round Barn Circle, Ste 200
Santa Rosa, CA 95403

19. **TERMINATION**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified (which shall be determined by the Authority but shall be not less than 10 days) and according to the requirements set forth in Authority's written notice of default, and in addition to any other remedy available to the Authority by law, the Authority Representative may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The Authority Representative shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance.

In the event of Authority's termination of this Agreement due to no fault or failure of performance by Consultant, Authority shall pay Consultant for services satisfactorily performed up to the effective date of termination. Upon termination, Consultant shall immediately deliver to the Authority any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of Authority. Consultant shall have no other claim against Authority by reason of such termination, including any claim for compensation.

20. **COMPLIANCE WITH LAWS**

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, et seq., California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100 et seq. Authority, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to Authority that it has all licenses,

permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the Parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.

22. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Authority to do otherwise.

23. **WAIVER**

A waiver by Authority of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Authority and Consultant.

25. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal Authority and authority to do so on behalf of their respective legal entities.

26. **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.

27. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

28. **AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

Authority reserves the right to employ other consultants in connection with the subject matter of the Scope of Services.

29. **EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

30. **FORCE MAJEURE**

Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in Authority's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of Authority from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of Authority'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 Authority shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, 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 Authority for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

32. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

33. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

34. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns

of the Parties to this Agreement.

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

36. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

37. **DRAFTING PARTY**

This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

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

RECOMMENDED FOR APPROVAL


DocuSigned by:

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Amrit Singh, Chief Financial Officer/Director of Administrative Services

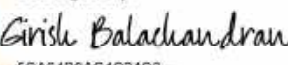
CONSULTANT NAME

Pisenti & Brinker LLP

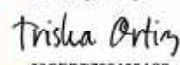
DocuSigned by:

By: _____
Name: _____
Title: Partner
Date: 9/15/2022

SILICON VALLEY CLEAN ENERGY
AUTHORITY

A Joint Powers Authority

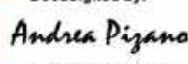
DocuSigned by:

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 9/15/2022

APPROVED AS TO FORM:

DocuSigned by:


Counsel for Authority

ATTEST:

DocuSigned by:


Authority Clerk

Exhibit A
Scope of Services

Perform audits of the basic financial statements of the Silicon Valley Clean Energy Authority (Authority) as set forth below for the period October 1, 2021 to September 30, 2022. Perform the audit in accordance with auditing standards generally accepted in the United States of America as set forth by the American Institute of Certified Public Accountants. If necessary, perform a Single Audit of the California Arrearage Payment Program (CAPP) according to Uniform Guidance.

Reports to be prepared include:

- Report on the fair presentation of the financial statements of the Authority;
- Management letter of comments;
- Report on significant deficiencies or material weaknesses in internal control, if any are identified;
- Other communications to those charged with governance as required by professional standards.
- Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with Government Auditing Standards (if a single audit is required);
- Report on compliance for each major federal program and report on internal control over compliance required by the Uniform Guidance (if a single audit is required);
- Schedule of findings and questioned costs and schedule of prior audit findings and responses (if a single audit is required).

PISENTI & BRINKER, LLP will retain all working papers and reports for a minimum of seven years. Working papers are available upon request to the government agencies with oversight over the Authority.

During the audits, PISENTI & BRINKER, LLP will observe the adequacy of the system of internal control relevant to the basic financial statements of the Authority. At the conclusion of the audits, PISENTI & BRINKER, LLP will make a presentation to the board or other representatives of the Authority if requested and present the audit report, findings, and make other communications as required by professional standards.

During the audits, PISENTI & BRINKER, LLP will provide routine progress reports to the audit committee, SVCE staff and outside accountant on the status of the engagement.

The Management Letter of Comments will address the following:

- Areas where the Authority's internal controls can be enhanced;
- Areas where operational processes can be streamlined and made more efficient;
- Compliance with other laws and regulations applicable to the Authority.

Should any irregularities or illegal acts come to the attention of the audit team during the course of the audits, PISENTI & BRINKER, LLP will make an immediate written report to Management and the Governing Board, unless they are clearly inconsequential.

Exhibit B

Schedule of Performance

We propose to perform the services according to the following timeline for the audit of the period October 1, 2021, through September 30, 2022. Subsequent years will be modified as mutually agreed upon.

September 2022:

- Execute contract and provide arrangement letter to SVCE
- Provide SVCE staff with a preliminary list of documents for the audits
- Kick-off meeting with audit committee

Early December 2022 – Entrance Conference and Preliminary Planning Phase:

- Planning meetings with SVCE management and finance staff
- Provide SVCE with a preliminary audit plan and discuss questions regarding documents and audit procedures

Mid-December 2022 - Fieldwork – Risk Assessment and Testing:

- Perform "walk-throughs" in order to obtain an understanding of the significant processes and related internal controls of finance and accounting functions
- Testing of significant year end balances and transaction cycles
- Perform compliance testing in connection with laws and regulations
- Perform compliance testing in connection with the Single Audit, if applicable;

Prior to January 16, 2023 – Complete Post Fieldwork & Deliver Draft Reports:

- Deliver to SVCE management:
 - Draft of audited financial statements
 - Draft of management letter and other communications
- Meet with SVCE management as needed to discuss draft reports

Prior to January 31, 2023 – Reporting and Wrap Up:

- Meet with SVCE finance committee to discuss draft reports
- Present and report on audit to SVCE board of directors (at a time and place to be designated by SVCE)
- Deliver all final reports and communications
- Completed Single Audit reports, if applicable.

Please note that this timeline is contingent upon our timely receipt of all documents, schedules, and other information necessary to complete the audits. Additionally, we will work with SVCE staff to fine-tune a mutually agreeable schedule.

Exhibit C **Compensation**

Authority shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of thirty-two thousand nine hundred dollars (\$32,900), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Task	Estimated Budget
1. Financial Statement Audit (incl Management Letter)	\$ 27,600
2. Single Audit (if necessary)	\$ 5,300
3.	
Total	\$ 32,900

Rates

Personnel	Title	Hourly
Kellin Gilbert	Partner	390
Brett Bradford	Partner	390
Jenna Blanchard	Supervisor	220
Aliandra Schaffer	Senior	180

Invoices

Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). Authority shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Authority does not pay interest on past due amounts.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority Representative prior to commencement of any additional services. Consultant shall submit, at the Authority Representative's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:**
Statutory coverage as required by the State of California.
- (2) **Liability:**
Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.
- (3) **Automotive:**
Comprehensive automotive liability coverage with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
- (4) **Professional Liability**
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.
- (5) **Privacy and Cybersecurity Liability**
Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs of at least \$5,000,000 US per occurrence.

Exhibit E
Confidentiality and Data Security Requirements

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

1. The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.
2. Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.
4. Consultant shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of their duties with respect to the Consultant program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any

Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Consultant shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with Authority. Without limiting Consultant's obligation of confidentiality as further described herein, Consultant shall be responsible for establishing, maintaining, and providing a written description to Authority of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the Authority's Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect Data be less stringent than the safeguards used by Consultant for its own data. If the services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Consultant agrees and warrants that it is responsible for the security of "cardholder data" that Consultant possesses, stores, processes or transmits on behalf of the Authority, and for any impact on the security of Authority's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the services. No less than annually, Consultant shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to Authority. The required audit shall be a SAS-70 (or successor standard) compliant audit, and Consultant shall provide the audit findings in the form of an SAS-70 Type II report.

5. Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Consultant notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.
6. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of the Authority's Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of the Data, Consultant shall, as applicable: (a) notify Authority as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Authority in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Authority; (c) in the case of Confidential Information, at Authority's sole election, (i) notify the affected individuals who comprise the Confidential Information as

soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Authority for any costs in notifying the affected individuals; (d) in the case of Confidential Information, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the Confidential Information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Consultant's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Authority for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Authority in connection with the occurrence; (g) be responsible for recreating lost Data in the manner and on the schedule set by Authority without charge to Authority; (h) provide to Authority a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at Authority's request, provide to Authority a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by Authority, which shall be executed by Consultant and may be relied upon by Authority as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

7. It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.
8. Consultant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Authority directly against such employees or representatives for

improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant's compliance with the terms of this Agreement.

9. Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority's written request, and at Authority's option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.
11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.
12. In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.



Staff Report – Item 1h

Item 1h: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Tina Walia, Executive Committee Chair

Date: 4/12/2023

The Executive Committee met March 24, 2023 at our first in-person meeting since 2020 to consider recommendations regarding an amendment to SVCE's Operating Rules and Regulations, recommend the Board of Directors approve a power purchase agreement with Middle River Power, recommend the Board of Directors approve a power purchase agreement with Rio Bravo Fresno, provide feedback on an electrification discount design, and receive information on the Member Agency Programs and Workgroup Activities.

Board Clerk Andrea Pizano presented an item requesting the Executive Committee's support in recommending an amendment to SVCE's Operating Rules and Regulations to expand the Executive Committee's membership to up to six Board members. The committee voted to support staff's recommendation, which will be on the agenda for the April board meeting.

Monica Padilla, COO and Director of Power Resources, and Charles Grinstead, Senior Manager of Power Resources, presented two items: 1) an item requesting the Committee recommend that the Board of Directors approve a power purchase agreement (PPA) with Middle River Power to meet resource adequacy and mid-term reliability procurement order requirements, and 2) an item requesting the Committee recommend that the Board of Directors approve a PPA with Rio Bravo Fresno to meet renewable portfolio standard and resource adequacy requirements.

Staff's recommendation for the Executive Committee to recommend that the SVCE Board of Directors approve the Middle River Power PPA included three parts: 1) delegate authority to the CEO to finalize and execute a PPA with Middle River Power for its Hybrid Natural Gas Power Plant with Battery Energy Storage System, 2) approve exception to the Energy Risk Management Policy to enable gas transactions needed to manage Hanford PPA, and 3) direct staff to develop a policy and/or guidelines to set aside funds to be used for programs and/or projects to mitigate emissions associated with energy produced by the Hanford project resulting from the Hanford PPA. The committee had a robust discussion with staff and voted to support the recommendation, which will be presented by staff to the Board at the April meeting.

Staff's recommendation for the Rio Bravo Fresno Renewable Biomass project was requested as the agreement is needed to meet Renewable Portfolio Standard and Resource Adequacy requirements for calendar years 2023, 2024 and 2025. Rio Bravo Fresno is also not an enabled counterparty with SVCE and therefore the Board-approval or delegation of authority to the CEO is necessary. The committee voted to support staff's recommendation to delegate authority to the CEO to negotiation and execute the PPA which will also be presented at the April meeting.

Peter Mustacich, Energy Services Lead, presented an item requesting feedback from the committee on the design of an electrification discount; committee members provided initial feedback to staff who will bring it

Agenda Item: 1h**Agenda Date: 4/12/2023**

back to the Board of Directors at our April board meeting for a vote on a proposed "TOU Super" discount design structure.

Lastly, Anthony Eulo, Senior Manager of Public Sector Services, presented an update on Member Agency Programs and Workgroup Activities.

Materials from this meeting can be found on SVCE's website: [SVCE Executive Committee Meeting, March 24, 2023](#)

The next meeting of the Executive Committee is scheduled for April 28, 2023 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 1i

Item 1i: Legislative Response to Industry Transition 2023 Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Yvonne Martinez Beltran, Committee Chair

Date: 4/12/2023

The Legislative Response to Industry Transition 2023 Ad Hoc Committee held its first meeting March 29, 2023. I was selected as Chair, and Director Klein was selected as Vice Chair of the committee.

The committee received information from staff on the state and federal legislative landscape and discussed priority legislation aligned with SVCE’s 2023 Legislative Policy Platform and focus areas.

The next meeting of the Committee is expected to be held in June and will be scheduled based on member availability.

**Staff Report – Item 1j**

Item 1j: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 4/12/2023

Per direction from the SVCE Board on December 9, 2020 for the CEO to provide a report of the ongoing activities of California Community Power (CC Power) after each of its meetings, this is to report CC Power held a regular board meeting on Wednesday, March 15, 2023.

Attached is a summary report from General Manager Alex Morris; materials from the March board meeting can be found here on the CC Power website: [CC Power Meeting, 3/15/23](#)

The next meeting of the board will be April 19, 2023 at 1:00 p.m.; meeting materials can be found on the CC Power website: <https://cacomunitypower.org/meetings/>

ATTACHMENTS:

1. CA Community Power Board Meeting Summary from General Manager Alex Morris, March 15, 2023

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 3/17/2023
FROM: Alex Morris – General Manager
SUBJECT: Report on CC Power Regular Board of Directors Meeting – March 15, 2023

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, March 15, 2023, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: <https://cacommunitypower.org>

Highlights of the meeting included the following:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Calendar** - The Board unanimously approved the following items:
 - Minutes of the Regular Board Meeting held on February 15, 2023.
- **Discussion of Offshore Wind Development** – The Board authorized the General Manager to work with the Offshore Wind ad hoc committee to develop and possibly issue the Offshore Wind Request for Information in February. General Manager Morris updated the Board on activities of the subcommittee and the projected timeline. Board members expressed a continued interest in participating in the project and suggested the schedule be accelerated. The board took no action.
- **Near-Term Workplan and Preliminary 2023-2024 Budget Briefing** – CC Power is transitioning from a Calendar Year budget to July – June fiscal year to better align with Member budgeting. General Manager Morris presented his work plan and his initial thoughts on the FY '23/24 as part of that alignment. Mr. Morris noted that the Board-Approved Strategic plan provides direction for CC Power work plans and resourcing levels in developing the budget. He reviewed the direction provided by the Strategic plan, the value-add work areas that have been identified, the trajectory CC Power is on, and the budget implications. The Board members expressed an interest that the work plan and budget remain grounded in the Strategic plan but recognize the dynamic nature of the industry and an openness to modifications built on a business case.
- **Other items**
 - Director Marshall informed the Board the [tribe] has become a member of Redwood Coast Energy Authority
 - Director Pepper informed the Board that she will retire effective at the end of June

A Joint Powers Agency whose members are:

Central Coast Community Energy | CleanPowerSF | East Bay Community Energy | MCE | Peninsula Clean Energy |
Redwood Coast Energy Authority | San José Clean Energy | Silicon Valley Clean Energy | Sonoma Clean Power |
Valley Clean Energy



Staff Report – Item 1k

Item 1k: Additional Committee Reports

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 4/12/2023

There are no reports for the 1) Finance and Administration Committee, and 2) Audit Committee, as they have not met since February 2023.

The next meetings for these committees are expected in the coming months.



Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 4/12/2023

REPORT

Staff Updates

Alex Krause joined the SVCE team on March 13, 2023 as a Senior Quantitative Analyst. He will be working on risk quantification, enhancing strategies, and creating financial models. Prior to joining SVCE, Alex was a risk manager at a credit hedge fund, where he built models to reduce risk, increase yield, and hedge tail scenarios. He also worked as a risk manager in the prime brokerage of Bank of America, evaluating institutional client portfolios and developing analytical tools. Alex received a B.S. in Engineering from Harvey Mudd College, specializing in Structural Dynamics and Systems Engineering, and an M.S. in Financial Engineering from Baruch College.

Leanna Huynh joined SVCE March 27, 2023 as a Senior Programs Specialist and will be supporting the implementation of SVCE's building decarbonization programs. Prior to joining SVCE, Leanna developed and implemented residential electrification programs at City of Palo Alto Utilities including a turnkey installation program for heat pump water heaters and an online solar and electric vehicle cost calculator tool. Leanna has a B.S. degree in Environmental Science from UCLA and an MBA in Sustainable Management from Presidio Graduate School.

Jessica Feng joined SVCE on March 31, 2023 as the Power Resource Planner in the Power Resources Department. Jessica will lead SVCE's load forecasting function to aid in planning and procurement for demand and supply-side resources. Additionally, Jessica will also support long-term planning and policy efforts, assist with development of distributed energy programs and provide analytical support to the Policy, Planning, Procurement, Regulatory and Operations team as needed. Prior to joining SVCE, Jessica spent time at two large investor owned utilities most recently with Pacific Gas and Electric as Expert Strategic Analyst for Clean Energy Programs and before that with PacifiCorp as a Market Fundamentals Consultant. Jessica holds multiple degrees including a Master of Science in Computer Science from College of William and Mary; Master of Science in Applied Economics and Statistics from Clemson University; and a Bachelor of Science in Economics from Peking University.

Eric Rodriguez joined the Decarbonization Programs and Policy team April 3, 2023 as a program lead. Eric joins us from the Building Electrification Institute where he has been supporting cities from across the nation electrify buildings. Prior to joining SVCE, he worked at the City of San Jose. Eric has a background in community organizing and he will play a key role in building engagement with a broad set of community groups and organizations.

Kaley Dodson joined the ESCR team as an Energy Services Specialist on April 10th. She will focus on the Energy Services side enabling us expand our customer engagement plans. Kaley comes to us with 5 years of experience in ecological conservation, most recently with the Northern Sierra Partnership, a collective conservation effort comprising The Nature Conservancy, Trust for Public Land, and three regional organizations. She is a Stanford

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grad with a BS in Earth Systems and master's from the UCSB Bren School of Environmental Science specializing in Energy and Climate.

Personnel Officer Update

SVCE's recruiting efforts continue to pay off, with two new Power Analysts joining the 4PRO team in late April, beyond the five new staff being introduced at this April meeting. Staff is putting finishing touches on the upcoming quarterly retreat on April 13th and 14th, and we hope to see some of you for dinner on Thursday evening. The remaining six positions are in various stages of recruitment, and staff hopes to present more hiring announcements at the May Board Meeting.

Website Navigation Update

The SVCE website navigation was updated in March to improve the user experience for customers and key stakeholders. SVCE website traffic has grown 70% from 2019 – 2022, as a result of our digital engagement efforts. The new navigation offers more details about SVCE, our story, how Community Choice Energy works, and makes customer rebates more forward-facing. These updates were informed by user testing and a survey that was performed last year. The footer of the website includes direct links for stakeholders and industries looking to do business with SVCE.

New webpages of interest:

- Member Agency Resources - created specifically for our member communities and board members (<https://svcleanenergy.org/member-agencies/>)
- Community Resilience webpage – showcases the community energy resilience projects starting to come online, that support our member jurisdictions from SVCE-provided grant funding (<https://svcleanenergy.org/community-resilience/>)

Additional updates, including a new filtering tool for customer rebates, are in development and will be launching soon.

DynaFLEX Grant Application

In March, SVCE joined a grant submission lead by the Electric Power Research Institute (EPRI) for a U.S. Department of Energy's Grid Resilience and Innovation Partnerships (GRIP) opportunity through the federal Bipartisan Infrastructure Law. The Dynamic Rates Deployment Project to Support Grid Reliability, Flexibility and Resilience (DynaFLEX) proposal will deploy machine-readable dynamic price signals to Automated Service Providers. The goal of the project is to increase the reliability, efficiency, and flexibility of the grid, and aligns and furthers existing state efforts on real-time pricing. As part of the grant submission, SVCE plans to commit to a \$1,000,000 cost share in the form of cash and in-kind services over 3 years if DOE awards the grant. We anticipate hearing back from EPRI on the status of the grant application by mid-summer 2023. SVCE's commitment letter is attached to this report.

CEO Agreements Executed

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

- 1) Silicon Valley Independent Living Center, Amendment: The Portable Battery Program for Medical Baseline Customer, date extension to April 17, 2024
- 2) SMUD, Task Order: SMB Program Support, not to exceed \$40,500
- 3) City of Milpitas, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$95,000
- 4) Joint Venture Silicon Valley, Amendment: Convening Support for Silicon Valley Transportation Electrification Clearinghouse and Regional Electric Vehicle Leadership Recognition Programs Services, extends date to 12/31/23
- 5) Municipal Resource Group, Amendment: Organizational Team Training Services, not to exceed \$90,000, extends date to 12/31/23
- 6) City of Sunnyvale, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$500,000, 3/21/23 – 12/31/24
- 7) NewGen Strategies & Solutions, Amendment: Advice and expert testimony to PG&E 2020-22 GRC, extends date to 4/30/24

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- 8)** Evgo, Incentive Program Agreement: Priority Zone DC Fast Charging Incentive Program Incentive Agreement, not to exceed \$200,000
- 9)** Abbot, Stringham & Lynch, Amendment: AMI Data Consulting, extends date to 12/31/23
- 10)** United Pacific, Incentive Program Agreement: Priority Zone DC Fast Charging Incentive Program Incentive Agreement, not to exceed \$100,000
- 11)** NP Energy, LLC, Amendment: Management and Policy Consulting, extends date to 6/30/23



CEO Power Supply Agreements Executed

Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value
TransAlta	2/24/2023	Purchase	Hedge Energy	4/1/2023	12/31/2025	\$44,666,325.75
Direct Energy	2/23/2023	Purchase	Resource Adequacy	6/1/2023	6/30/2023	\$235,000
Calpine	3/6/2023	Purchase	Resource Adequacy	6/1/2023	6/30/2023	\$282,000
Sonoma Clean Power	3/17/2023	Purchase	Carbon-Free Energy	4/1/2023	12/31/2023	\$375,000
Clean Power Alliance	3/9/2023	Purchase	Resource Adequacy	6/1/2023	6/30/2023	\$1,441,500
Constellation	3/15/2023	Purchase	Resource Adequacy	6/1/2023	6/30/2023	\$1,410,000
Long Beach	3/20/2023	Purchase	Resource Adequacy	1/1/2024	12/31/2026	\$15,750,000
Peninsula Clean Energy	3/1/2023	Purchase	Import Allocation Rights	6/1/2023	6/30/2023	\$46,000
Constellation	3/2/2023	Purchase	Import Allocation Rights	6/1/2023	6/30/2023	\$84,000
Constellation	3/2/2023	Purchase	Import Allocation Rights	6/1/2023	6/30/2023	\$4,000
Bonneville Power	2/17/2023	Purchase	Resource Adequacy	6/1/2023	6/30/2023	\$1,525,160
Bonneville Power	2/17/2023	Purchase	Resource Adequacy	6/1/2023	6/30/2023	\$2,832,440
Calpine	3/23/2023	Purchase	Renewable Energy PCC-1	4/1/2023	12/31/2023	\$4,800,000

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;
- CC Power Board Meeting, March 15, 2023, report included on the Consent Calendar

ATTACHMENTS

1. SVCE Letter of Commitment for the EPRI Proposal, 3/15/23
2. Clean Power Update, April 2023
3. Decarb Programs & Policy Update, April 2023
4. Energy Services & Community Relations Update, April 2023
5. Regulatory and Legislative Update, April 2023
6. Agenda Look Ahead, April – August 2023



333 W El Camino Real, Suite 330 | Sunnyvale, CA 94087 | 1-844-474-SVCE (7823) | SVCleanEnergy.org

March 15, 2023

Mr. Ammi Amarnath
Principal Project Manager
Electric Power Research Institute (EPRI)
3420 Hillview Ave., Palo Alto, CA 94304

Re: Letter of Commitment for the Electric Power Research Institute, Inc.'s (EPRI) Proposal in Response to DE-FOA-0002740 "Bipartisan Infrastructure Law Section 40107."

Dear Mr. Amarnath:

Silicon Valley Clean Energy (SVCE) is pleased to offer this letter of commitment for EPRI's "DynaFLEX - Dynamic Rates Deployment Project to Support Grid Reliability, Flexibility and Resilience" proposal.

As background, SVCE is a community-owned agency serving the majority of Santa Clara County communities, acquiring clean, carbon-free electricity on behalf of more than 270,000 residential and commercial customers. Supporting grid reliability is important part of SVCE's mission. In addition to purchasing clean energy to support the grid, we have also taken advantage of our Silicon Valley location to explore how demand management approaches and technology can help support the grid. As an example, SVCE's [Gridshift: EV Charging Program](#) helps subscribers to charge their EVs when the grid is cleanest and lowest-cost.

The DynaFLEX project will deploy the CalFUSE dynamic pricing framework and expand it to a larger scale, deploying machine-readable dynamic price signals to Automated Service Providers whose smart load-shaping technologies respond to the price in a way that increases the electric power systems' flexibility, efficiency, reliability, and resilience.

SVCE's proposed \$1,000,000 cost share will be in the form of both cash and in-kind services. Any other potential support provided by SVCE is conditioned upon the successful negotiation of mutually acceptable contractual arrangements that may be required. SVCE looks forward to participating with the EPRI Team in this effort. If you have questions, please contact Don Bray at don.bray@svcleanenergy.org.

Sincerely,

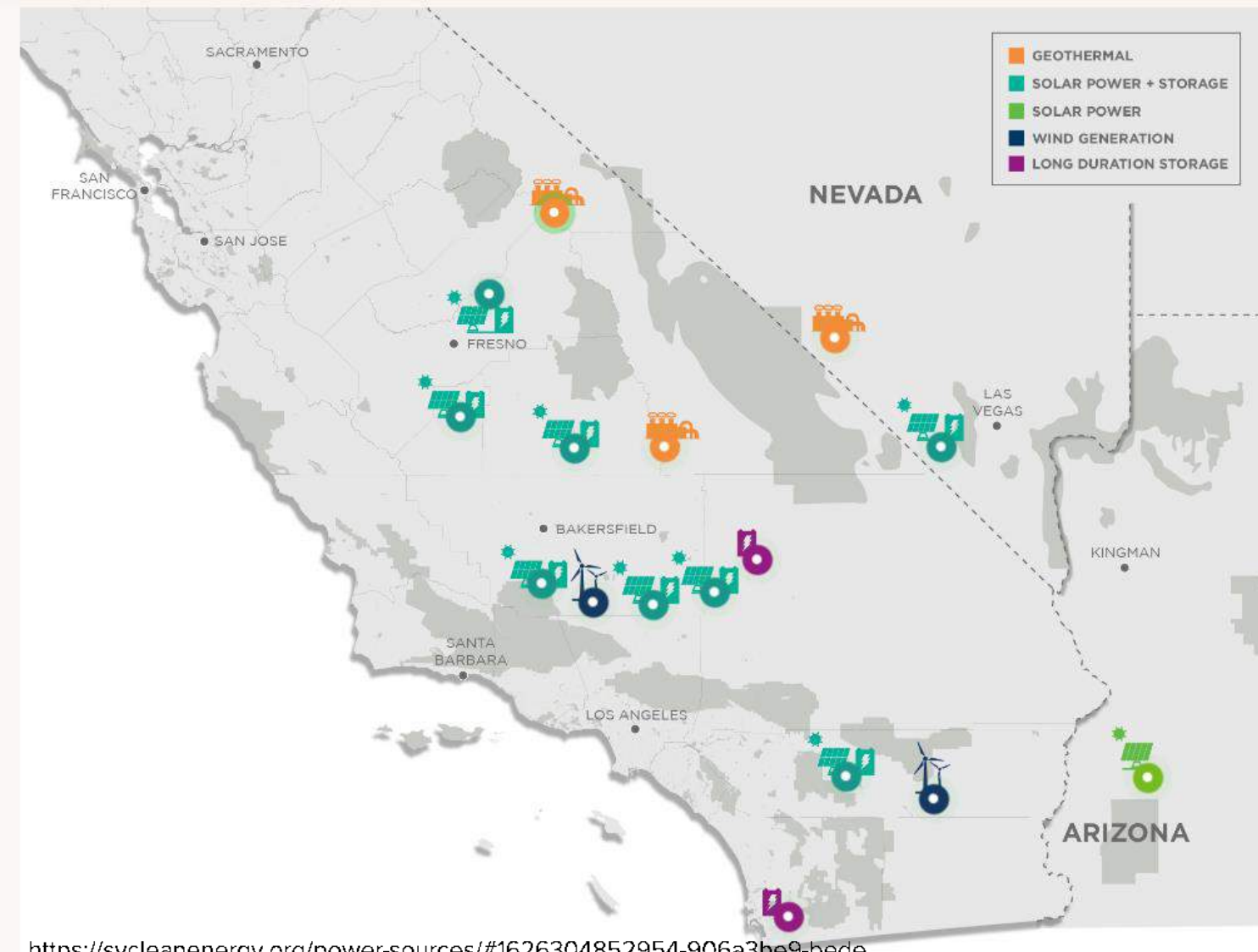
DocuSigned by:
A handwritten signature in black ink that reads "Girish Balachandran".
5CA54B9AC4C24C3

Chief Executive Officer

CEO Report Clean Power Update

SVCE Board Meeting
April 12, 2023

Clean Long-term Power Agreements



- \$1.9B+ in commitments
 - 16 PPAs signed
 - 13 new build projects
 - 676 MW of Renewable Power
 - 151 MW lithium-ion storage paired with 445 MW of Solar PV
 - 30 MW of Long-duration storage
- 6 Projects now delivering to SVCE meeting ~29% of energy needs:
- COSO geothermal - January 2022
 - Slate Solar + Storage – January 2022
 - Casa Diablo geothermal – September 2022
 - Mountain View wind – July 2022
 - Rabbitbrush Solar + Storage – October 2022
 - Terra-Gen Wind – January 2023

Item 2
Attachment 2



SVCE Long-Term Clean Energy Contracts

	Seller	Project Name	Technology	Generation MW	Storage MW	Approximate % of Annual load in 2025	Term (years)	Lifetime Not to Exceed Authority (MM\$)	SVCE Board Approval	Status
1	MN8	Slate	Solar + Storage	93.0	46.5	6.7%	17	\$198	Oct-18	Online
2	Ormat	Casa Diablo	Geothermal	7.0		1.4%	10	\$43	Feb-20	Online
3	Atlantica	Coso	Geothermal	43.8		9.6%	15	\$331	Mar-20	Online
4	Leeward	Rabbitbrush	Solar + Storage	40.0	8	3.0%	15	\$64	Apr-20	Online
5	NextEra	Yellow Pine	Solar + Storage	50.0	26	4.1%	20	\$128	May-20	Construction
6	Avantus	Aratina	Solar + Storage	80.0	20	6.6%	20	\$174	Jun-20	Pre-construction
7	174 Power Global	Atlas	Solar	50.0	0	3.8%	10	\$27	Jan-21	Pre-construction
8	SB Energy	Angela	Solar + Storage	20.0	10	1.4%	15	\$35	Mar-21	Pre-construction
9	AES	Mountain View	Wind	33.3		3%	20	\$128	Apr-21	Online
10	Origis	San Luis West	Solar + Storage	62.5	15.625	4%	15	\$74	Apr-21	Pre-construction
11	Clearway	Victory Pass	Solar + Storage	100.0	25	8%	15	\$149	May-21	Construction
12	Terra-Gen	Cameron Crest	Wind	77.7		5%	15	\$150	May-21	Online
13	Rev Renewables	Tumbleweed	Long Duration Storage		15.9375	n/a	15	\$100	Feb-22	Pre-construction
14	Onward	Goal Line	Long Duration Storage		14.2	n/a	15	\$100	Mar-22	Pre-construction
15	Ormat	Geothermal Portfolio	Geothermal	16.75		3.3%	20	\$256	Jun-22	Pre-construction
16	OME	Fish Lake	Geothermal	1.82		0.4%	20	\$30	Clean Power Update, April 2023 Jun-22	In-development



Clean Energy Resources On-line Progress as of 3/28/2023

2023 – Q2

- Angela Solar + Storage – **Pre-construction – delayed**
- Aratina Solar + Storage – **Pre-construction – delayed**

2023 – Q3

- Yellow Pine Solar + Storage – **Construction mode – delayed – project working toward synchronization to CAISO**

2023 – Q4

- San Luis West Solar + Storage - **Pre-construction – delayed**

2024 – Q1

- Victory Pass Solar + Storage – **Construction mode – delayed**

2024 – Q2

- FCR: Fish Lake Geothermal – Pre-construction

2025+

- FCR: Ormat Geothermal - **Pre-construction**
- LDS: Goal Line and Tumbleweed - **Pre-construction**
- Atlas Solar – **Pre-construction - delayed**



Upcoming Projects

Yellow Pine: 50 MW PV, 26 MW BESS

- COD in June/July 2023

Victory Pass: 100 MW PV, 25 MW BESS

- COD in March 2024



Yellow Pine Solar + Storage

THANK YOU!



DECARBONIZATION PROGRAMS AT A GLANCE

[Click for More Information](#)

● Active ● In Development ● Complete

POWER SUPPLY	<ul style="list-style-type: none"> ● C&I Clean Power Offerings
BUILT ENVIRONMENT	<ul style="list-style-type: none"> ● FutureFit Fundamentals ● FutureFit Heat Pump Water Heater ● Permit Simplification Effort ● Resilience at Community Facilities ● Medical Baseline Battery Program ● CRCR Bill Relief ● Reach Codes ● Electric Showcase Awards ● Accessible Financing ● Feasibility Assessment - Natural Gas Phase Out By 2045 ● FutureFit Homes & Buildings ● Existing Building Policy Experimentation ● Regional Coordination ● SV Building Electrification Clearinghouse (SVBEC)
MOBILITY	<ul style="list-style-type: none"> ● CA Electric Vehicle Infrastructure Project (CALeVIP) ● Future Fit Assist ● Multifamily EV Charging Installation Incentive Program ● Priority Zone DCFC ● SV Transportation Electrification Clearinghouse (SVTEC) ● Fleet Electrification Program
GRID INTEGRATION	<ul style="list-style-type: none"> ● GridShift EV Charging ● Lights On Silicon Valley ● Other Virtual Power Plant
EDUCATION & OUTREACH	<ul style="list-style-type: none"> ● Customer Resource Center (eHub) ● Data Hive ● Building Decarbonization Demonstration Grants ● Decarbonization Engagement Grants
INNOVATION	<ul style="list-style-type: none"> ● Innovation Onramp Pilots



DECARBONIZATION PROGRAMS UPDATE

MARCH HIGHLIGHTS



Upgrade Your Yard Care Routine and Get \$50 Off

Spring is finally here, and with it comes time to start thinking about your yard care routine. If you are tired of dealing with gas fumes and loud machinery, perhaps it's time to upgrade your yard care equipment and go electric. Right now, Silicon Valley Clean Energy (SVCE) customers can get \$50 off electric lawn mowers and leaf blowers through the [Appliances Assistant](#).

When you upgrade your traditional gas-powered yard care equipment to electric, you are choosing the cleaner, more efficient solution. Upgrade your yard care routine and experience the many benefits of electric yard care for yourself at <https://svcleanenergy.org/electric-home/#electric-yard-care>.

Updates to our Multifamily EV Charging Installation Incentive Program

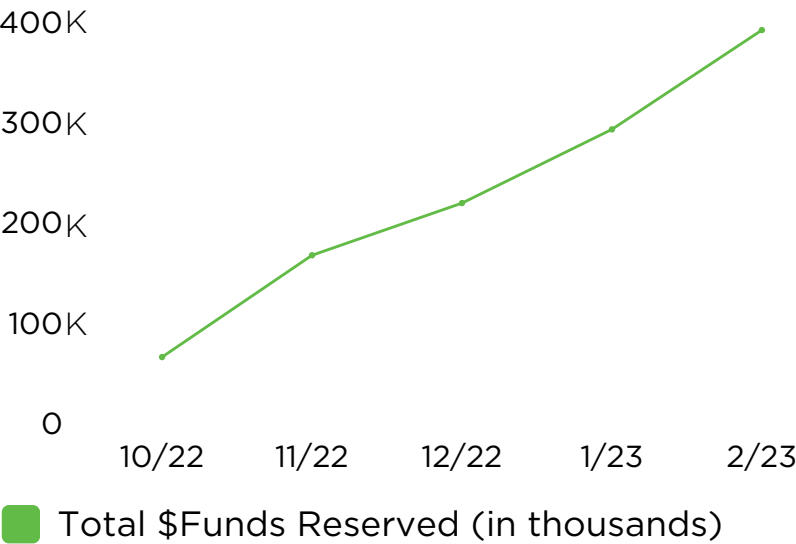
New SVCE incentives are now available to fund the incremental EV charging costs associated with new EV codes for new construction affordable housing. Additionally, existing multifamily buildings seeking to install EV charging can now access higher incentives aimed to address rising material and labor costs. Since this program launched last June, we have seen high interest and approved hundreds of projects.

You can learn more about these incentives and [apply here](#).



Future Fit Homes

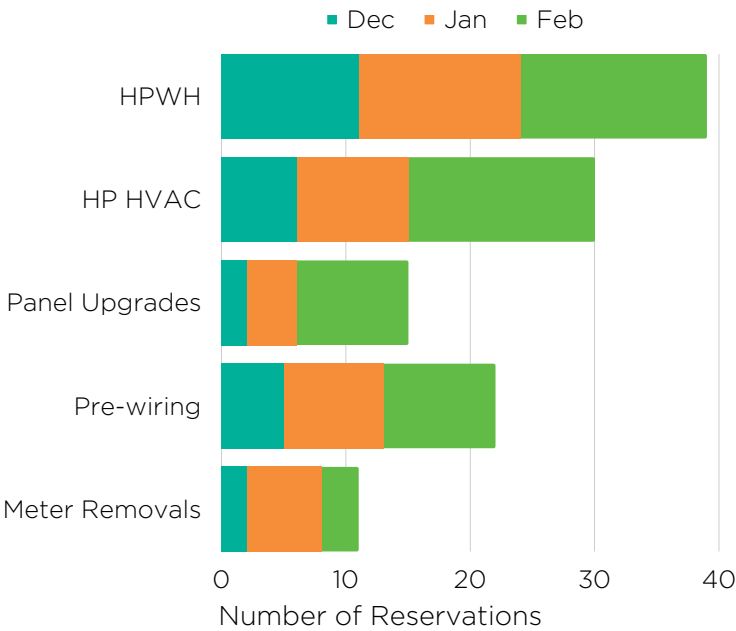
Provide incentives to residents for electric heat pump water heaters (HPWH), heat pump HVAC systems, service panel upgrades, and pre-wiring upgrades to replace gas appliances



Rebates claimed*: \$1.06M

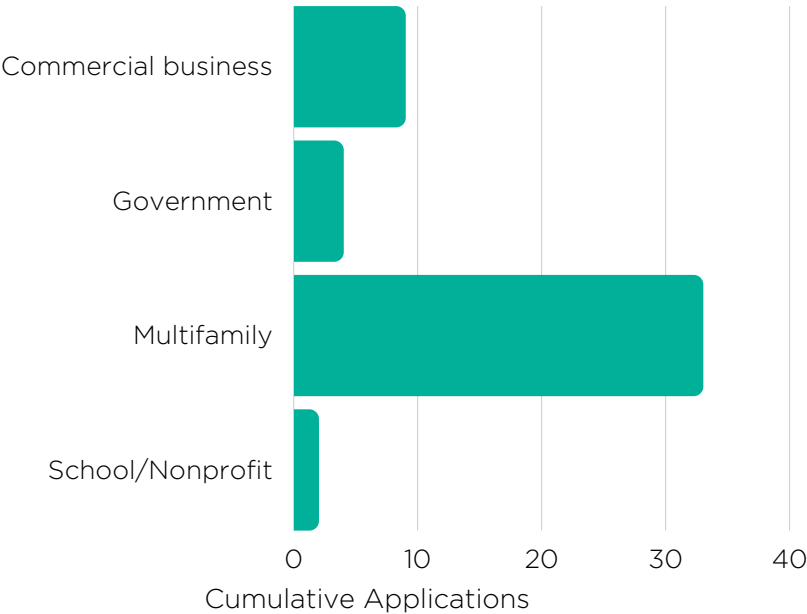
Rebates reserved: \$392.5K

*Under old program FY20** -2022



Future Fit Assist

Assistance in site assessment, preliminary design, and applying to rebates for charging at multifamily housing and small and medium workplace properties.



Charging Installation Incentive Program

Incentive program for L1 and L2 EV charging infrastructure at multifamily properties

Funds Reserved: \$707K

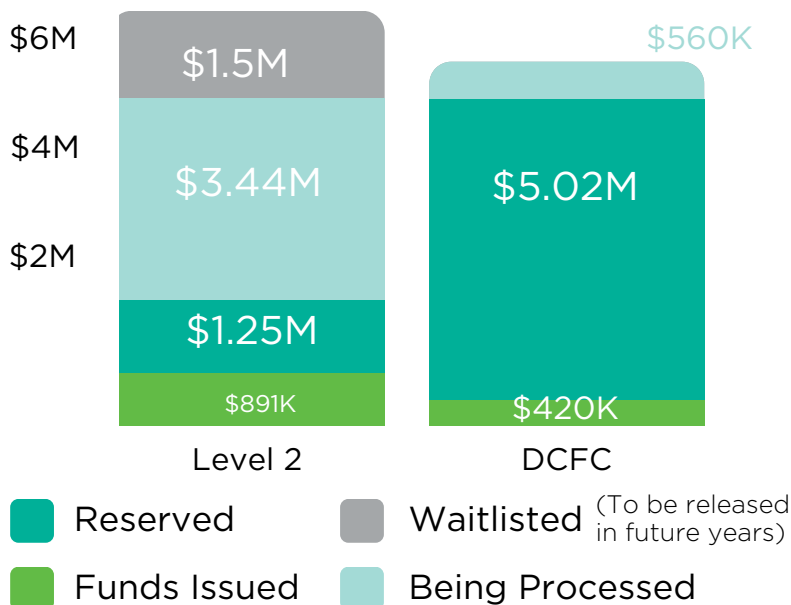
Approved Reservations: 17

Goal: 35 Sites, 150 ports



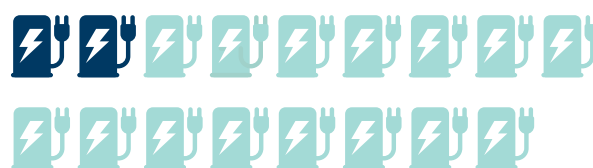
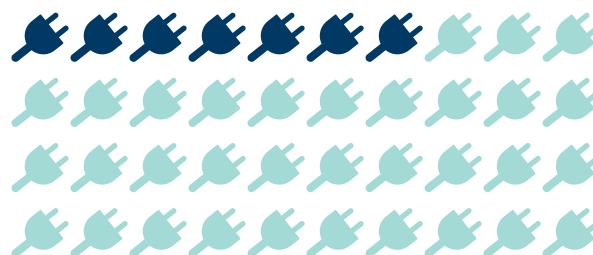
CALeVIP

Provide incentives for electric vehicle (EV) chargers as part of a regional program



Funding: \$11.58M

Goal: 1K Level 2 + 85 DC Fast Chargers by 2023

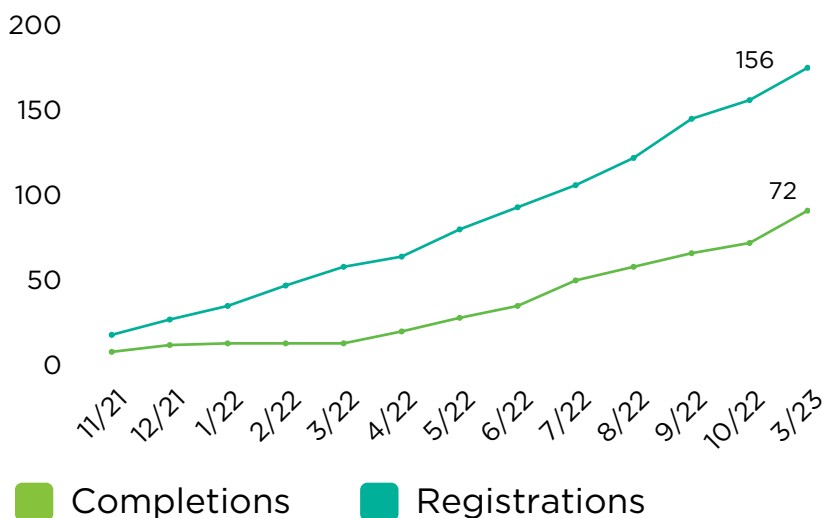


= 25 Level 2 Installations

= 5 DCFC Installations

FutureFit Fundamentals

Provide financial relief to contractors by expanding their knowledge of electrification technologies



Funding: \$1.5M

Goal: 150 Participants Complete the Course (Phase 1)



= 5 Participants Complete Course

1. Outreach Events & Sponsorships

Date	Sponsorship	Location
4/15/2023	Sunnyvale Earth Day 12 p.m. – 3 p.m. <i>Tabling</i>	Sunnyvale Public Library 665 W Olive Ave, Sunnyvale, CA 94086
4/19/2023	Western Digital Earth Day Vendor Fair 11:30am- 1:30pm <i>Tabling</i>	Western Digital Milpitas Campus 951 Sandisk Dr, Milpitas, CA 95035
4/20/2023	Supervisor Otto Lee's District 3 April Roundtable 7:00 p.m. <i>Presentation</i>	Virtual
4/21/2023	Saratoga Elementary Earth Day 9:00 a.m. – 12:00 p.m. <i>Tabling and presentation</i>	Saratoga Elementary 14592 Oak St, Saratoga, CA 95070
4/22/2023	Cupertino Earth Day 11:00 a.m. – 3:00 p.m. <i>Event stage sponsor + tabling</i>	Library Field Park 10400 Torre Avenue Cupertino, CA 95014
4/22/2023	Milpitas Earth Day 10:00 a.m. – 12:00 p.m. <i>Tabling</i>	Milpitas Selwyn Park

1. Outreach Events & Sponsorships

Date	Sponsorship	Location
4/22/2023	Mountain View Earth Day 9:00 a.m. – 1:00 p.m. <i>Tabling</i>	Mountain View Community Center Redwood Hall 201 S Rengstorff Ave, Mountain View, CA 94040
4/22/2023	Sunshine Gardens Earth Day 3:30am- 5:30pm <i>Tabling</i>	Sunshine Garden Apartment Complex 132-150 Dana St Mountain View, CA 94041
4/22/2023	American Association of University Women Community Earth Day Festival 10:00 a.m. – 3:00 p.m. <i>Brand recognition</i>	Morgan Hill Community Cultural Center amphitheater 17000 Monterey Hwy, Morgan Hill, CA 95037
4/23/2023	Los Gatos Spring Into Green 10:00 a.m. – 1:00 p.m. <i>Tabling</i>	Town Plaza Park Montebello Way, Los Gatos, CA 95030
4/24-28/2023	Fremont Unified School District Earth Day Presentations Time: TBD	Homestead High School, Fremont High School, Cupertino High School Monta Vista High School
4/29/2023	Saratoga Blossom Festival 10:00 a.m. – 4:00 p.m. <i>Tabling</i>	Heritage Orchard and Saratoga Civic Center (13777 Fruitvale Avenue in Saratoga, CA).

2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.33%	96.36%
Commercial	96.72%	

3. Member Agency Working Group – March Update

The recent MAWG meeting was held in person on March 23, 2023 and was attended by 12 different agencies and organizations with a total of 33 participants.

The following agenda items were presented and discussed:

- State Policy Keynote - *Ken Branson, Senior Policy Advisor for Climate, Energy, and Environmental Issues for State Senator Josh Becker*
- SVCE Existing Building Electrification Overview
- Electrification Policy Experimentation: Summary & Prioritization
- City of San Jose Building Decarbonization Activities
- BAAQMD Implementation Work Group
- Upcoming EPA Grant Collaboration Opportunity

4. EmpowerSV Scholarship Competition

2023 competition is about going electric & community participation

- Students create and submit clean energy short films for an opportunity to win up to \$3,000
- This year's competition open to middle & high school students
- Accepting submissions March 17 – May 12, 2023
- More info at <https://svcleanenergy.org/empower-sv/>



5. Electrification Ad Campaign

New ad campaign is launching this month to promote electrification awareness.

- Goal is to get customers to think about planning ahead and avoiding emergency replacements.
- Ads send customers to the electric appliances page of eHub and the FutureFit Homes and Buildings rebates.



6. Press & Media

Media

- [Energy efficiency rewards](#), *The Mercury News (Campbell, Milpitas, Saratoga, Sunnyvale)*, 02-26-23
- [Mountain View City Council member Margaret Abe-Koga announces 2024 bid for county supervisor](#), *Palo Alto Online*, 03-07-2023
- [Your devices are going to make charging decisions for you - starting with your iPhone](#), *SF Gate*, 03-15-2023
- [Campbell gets \\$5.2M million in grants for new library](#), *The Mercury News & East Bay Times*, 03-26-2023
“Silicon Valley Clean Energy provided \$500,000 toward efforts to eliminate natural gas usage in the 24,000-square-foot Campbell Library. These improvements have the potential to reduce long-term maintenance costs while enhancing citywide energy conservation efforts.”
- [California Community Electricity Providers Issue \\$5 Billion in Bonds for Clean Energy Projects](#), *YubaNet.com*, 03-27-2023
- [Morgan Hill earns clean energy grants](#), *Morgan Hill Times*, 03-27-23

SVCE Legislative and Regulatory Update

April 12, 2023



Policy Updates

Regulatory Update:

1. Load Management Standards

Legislative Update:

1. Budget Trailer Bill
2. Key Legislation



Regulatory Update



Key Regulatory Proceedings

Proceeding	Purpose	Status
Load Management Standards	To increase efficiency and demand flexibility in California's electricity grid.	Although the Load Management Standards rulemaking at the California Energy Commission (CEC) has concluded, stakeholders continue to work with CEC staff on the implementation of the regulations that resulted from the rulemaking. In Summer of 2023, all investor owned utilities (IOUs), publicly owned utilities (POUs), and large community choice aggregators (CCAs) are required to upload their time-dependent rates into the CEC's Market Informed Demand Automation Server (MIDAS). MIDAS is a database that will provide consumers with access to time-dependent rates. SVCE is currently working with IOUs, POUs, and other CCAs on resolving various implementation issues surrounding the Summer 2023 requirement.



Legislative Update



Governor's Budget Trailer Bill

Governor is proposing energy policy changes through the budget process

Key Provisions

- 1) Central Procurement:** Would allow the CPUC to direct the IOUs or Dept. of Water Resources to centrally procure resources.
Challenge: Very broad CPUC authority to order central procurement of any resources.
- 2) Expanded CPUC Authority:** Broad expansion of CPUC's authority over CCAs.
Challenge: Infringes on CCA Board governance.
- 3) Capacity Payments:** Additional payment on top of CPUC's RA penalties for when state back-up resources are used for reliability.
Challenge: Double-penalty doesn't change behavior - impacts affordability.



2023 Key Legislation

Staff is reviewing bills around interconnection, Brown Act, EV, and Building Decarb bills.

Bill	Summary
AB 538 (Holden)	Directs CAISO to present a governing plan to the CEC on regionalization.
SB 410 (Becker)	Requires IOUs to provide data to the CPUC on response time to provide upgraded electrical service for building electrification, EV charger, or solar installations.
AB 643 (Berman)	Requires CPUC to submit report to legislature with information on interconnection timelines for customer-sited energy generation/storage resources.
SB 411 (Portantino), AB 557 (Hart), and SB 537 (Becker)	Would make changes to the Brown Act to allow more flexibility in remote Board participation.



SVCE Positions

Status of the bills that SVCE has taken positions on

Bill	Summary	Legislative Platform Policy	SVCE Position	Bill Status
AB 625 (Aguiar-Curry)	Extends sunset date of the BioMAT program	Competitive Equity	Support	Asm. Natural Resources
SB 488 (Alvarado-Gil)	Allows CCAs to participate in the BioRAM program.	Competitive Equity	Support	Senate Energy



Key State Legislative Milestones

- ~~January 4 – Legislature Reconvenes~~
- ~~February 17 – Last day for bills to be introduced~~
- April 28 – Last day for policy committees to vote on fiscal bills
- May 5 – Last day for policy committees to vote on non-fiscal bills
- May 19 – Last day for fiscal committees to hear bills introduced in that house
- June 2 – Last day for each house to pass bills introduced in that house
- June 15 – Budget bill must pass by midnight
- July 14 – Last day for policy committees to vote on bills
- September 1 – Last day for fiscal committees to vote on bills
- September 14 – Last day for each house to pass bills
- October 14 – Last day for Governor to sign bills

APRIL 2023	MAY 2023	June 2023	July 2023	August 2023
Board of Directors, April 12:	Board of Directors, May 10: Consent: Minutes March 2023 Treasurer Report Committee Reports Reinstate SVCE's Delinquent Accounts & Collections Policy Insurance Coverage Water Heater Loaner Contract Regular Calendar: Hedging Analysis	Board of Directors, June 14: Consent: Minutes April 2023 Treasurer Report Program Portfolio Management software contract FFH Concierge Contract FF Assist Contract Committee Reports Regular Calendar: Stress Test Analysis Strategic Plan Update	Board of Directors, Cancelled	Board of Directors, August 9: Consent: Minutes May 2023 Treasurer Report SVCE 2022 Annual Power Source Disclosure Report Attestation Committee Reports Regular Calendar: Budget Preview
Executive Committee, April 28: Hedging Analysis Insurance Coverage Program Snapshot	Executive Committee, May 26: Stress Test Analyses Intro to 2024 Strategic Plan Program Snapshot	Executive Committee, June 23: FY Budget Framework Program Snapshot	Executive Committee, Cancelled	Executive Committee, August 25: Budget Preview Program Snapshot

Staff Report – Item 3

Item 3: Delegate Authority to the Chief Executive Officer to Execute a Power Purchase Agreement for Biomass Project Rio Bravo Fresno

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Chief Operating Officer
Charles Grinstead, Senior Manager of Power Resources

Date: 4/12/2023

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy Authority's (SVCE) Board of Directors delegate authority to SVCE's Chief Executive Officer (CEO) to negotiate and execute a Power Purchase Agreement (PPA) with the Rio Bravo Fresno (RBF) Renewable Biomass project with the following parameters:

1. 25 MW of existing biomass qualifying as Portfolio Content Category One (PCC1) renewable energy and approximately 20 MW of Resource Adequacy (RA) qualifying capacity;
2. Contract term two years and seven months with an expected start date of May 2023; and
3. Total amount not-to-exceed \$60,000,000

Approval of this authorization is necessary to help meet SVCE's Renewable Portfolio Standard (RPS) mandates and goals and Resource Adequacy obligations. Typically, these types of resources for this term are executed through the CEO's existing authority as delegated to the CEO through established enabling agreements with preapproved counterparties, however RBF is not a preapproved counterparty and therefore the Board is being asked to delegate the authority to the CEO.

EXECUTIVE COMMITTEE RECOMMENDATION

At the March 24, 2023 Executive Committee meeting, staff presented the RBF project. The Executive Committee unanimously voted to recommend that the Board approve staff's recommendation to delegate authority to the CEO to negotiate and execute the RBF PPA as described herein.

BACKGROUND

As a load serving entity in California, SVCE must adhere to certain obligations including an RPS mandate which sets how much of SVCE's retail sales must be met from RPS eligible resources, such as wind, solar, geothermal and biomass. The state mandated RPS for 2023, 2024 and 2025 is approximately 41%, 44% and 47%, respectively. Additionally, the SVCE Board has established an aggressive annual 100% Clean Energy target consisting of approximately 50% and 50% carbon-free, non-RPS, resources such as large hydro. SVCE is slightly short in its RPS position relative to the Board's target of 50%.

The California Public Utilities Commission (CPUC) Resource Adequacy (RA) program requires that LSEs, such as SVCE demonstrate sufficient capacity to meet peak demands and demonstrate compliance on a year ahead and month ahead basis. SVCE is currently short RA in many months through 2025.

In March 2023, SVCE issued a Request for Offers (RFO) for short-term eligible resources and carbon free energy to meet 2023 and 2024 RPS and clean energy requirements. Additionally, SVCE has issued multiple

Agenda Item: 3**Agenda Date: 4/12/2023**

RFOs for RA capacity for the 2023 through 2025 period. The RFOs have not materialized in sufficient clean energy and RA capacity and as such staff has had to reach out to the market through bilateral discussions to try to meet the various obligations. RBF was offered to SVCE through a bilateral discussion to meet SVCE's RPS and RA requirements. The price is consistent with other offers seen through previous RFOs.

DISCUSSION AND ANALYSIS

IHI Americas and North American Cogeneration, Inc. owns, operates, and markets the power and capacity attributes associated with Rio Bravo Fresno Renewable Biomass. RBF was built in June 1988, is located within Fresno County, and operates in the CAISO balancing authority. The fuel source at RBF is renewable biomass. Agricultural pruning and urban wood are the two major sources of biomass used at the facility. Much of the material has historically been open burned or land filled resulting in atmospheric pollution, waste of landfill space, and underutilization of our renewable resources. The circulating fluidized bed (CFB) boiler technology used at RBF allows for a more complete and efficient burn of the biomass, thus air pollutants are dramatically reduced. RBF plans to operate consistently throughout the year each hour of the day supplying renewable energy when it is most needed.

Project Overview

Project Name:	Rio Bravo Fresno
Owner/Operator:	IHI Americas, Inc. & North American Cogeneration, Inc.
Technology:	Renewable Biomass (Wood Pruning and Urban Wood for feedstock)
Nameplate MW:	25
Expected Annual Dispatched Energy MWhs:	175,000
Expected Commercial Operation Date & Term:	May 2023 – December 2025
Location:	Fresno, California
Price terms:	Fixed Price

SVCE's primary interest from this project is to help meet its renewable goals as well as providing valuable RA capacity in summer months. This resource will operate as a "baseload" generator where it will generate unconstrained into the market and as such is expected to deliver approximately 20 MWs of RA qualifying capacity.

Overall, RBF provides a complete offering of economic renewable energy, capacity, and given the term of the contract, a bridge into SVCE's long term goals of providing 100% clean energy from technologies such as solar, wind and geothermal.

ALTERNATIVES

The SVCE Board can decide not to authorize execution of the RBF PPA and direct SVCE staff to continue to seek resources to meet RPS and RA requirements. Given the demand for such products and current pricing, staff does not recommend this alternative as it increases SVCE's risk of non-compliance and therefore penalties for both the RPS and RA mandates.

STRATEGIC PLAN

Execution of the RBF PPA supports the goals of the Board adopted Fiscal Year 2022-23 Strategic Plan including:

- **Goal 1:** Plan for resources to meet SVCE's mission while balancing multiple stakeholder objectives
- **Goal 2:** Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner
- **Goal 3:** Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives

Agenda Item: 3**Agenda Date: 4/12/2023**

FISCAL IMPACT

The RBF PPA, if executed, will begin delivery in May 2023. Fiscal Year (FY) 2022-23 Operating Budget already accounts for the cost of meeting RPS and RA requirements. For future fiscal years, the cost associated with RBF PPA will be included in the Operating Budget.



Staff Report – Item 4

Item 4: Adopt Resolution Authorizing the Chief Executive Officer to Finalize Negotiations and Execute Power Purchase Agreement with Middle River Power for the Hanford Hybrid Natural Gas Power Plant and Battery Energy Storage System; Allowing for an Exception to the Board-adopted Energy Risk Management Policy; and Directing Staff to Return with a Policy and Guidelines for Establishing a Fund to Mitigate the Impacts of Emissions Associated with the Hanford PPA

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO and Director of Power Resources
Charles Grinstead, Sr. Manager of Power Resources

Date: 4/12/2023

RECOMMENDATION

Staff recommends that the Board consider approval of Resolution No. 2023-06 (Attachment 1) which provides for the following:

1. Delegates authority to the Chief Executive Officer (CEO) to finalize negotiations and execute a Power Purchase Agreement (PPA) with Middle River Power, or its affiliate MRP Pacifica Marketing LLC, for Resource Adequacy with Dispatchable Energy from its Hanford Hybrid Natural Gas Power Plant and Battery Energy Storage System ("Hanford") for a term not to exceed twelve years and in an amount not to exceed \$280,000,000 over the life of the PPA with the following parameters:
 - a. Resource Adequacy (RA) capacity from existing Hanford Natural Gas Power Plant of 99.4 megawatts (MW)
 - b. Additional RA capacity from a new Battery Energy Storage System (BESS) of 16 MW sited adjacent to Hanford with an expected 13.97 MW to count towards the Mid-term Reliability Procurement Order and with expected commercial on-line date of April 1, 2024 date and delivery through April 30, 2036.
 - c. Dispatchable energy from the Natural Gas Peaker Power Plant subject to operating constraints and to meet demand under certain market and grid conditions
2. Provides for an exception to the Board-approved [Energy Risk Management Policy](#) to allow for the procurement of natural gas to manage risk associated with the Natural Gas Peaker Plant Toll portion of the Hanford project, if necessary.
3. Directs staff to develop a policy and/or guidelines to set aside funds to be used for programs and/or projects to mitigate emissions associated with energy produced by the Hanford project resulting from this PPA and return to the Board by the December 2023 Board meeting with a recommendation.

Finalization and execution of the Hanford PPA is necessary to ensure SVCE can meet its RA Program obligations as mandated by California and to further help meet its obligations under the Mid-term Reliability Procurement Order. The inclusion of an option to dispatch energy will enable SVCE to meet load requirements under certain critical market conditions and provide for grid reliability. While the investment in a natural gas power plant is not consistent with SVCE's greenhouse gas reduction goals, the amount of energy expected to

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be generated is minimal. Further, support of hybrid natural gas resources with BESS is necessary to support a smooth transition to a cleaner grid and to ensure SVCE can meet its affordability and reliability objectives.

EXECUTIVE COMMITTEE RECOMMENDATION

At the March 24, 2023 Executive Committee meeting, staff presented the Hanford project to seek support for its recommendation to the Board. The Executive Committee unanimously voted to recommend that the Board approve staff's recommendation to delegate authority to the CEO to finalize negotiations and execute the Hanford PPA as described herein.

BACKGROUND

In 2006, the California Public Utilities Commission (CPUC) launched a Resource Adequacy compliance program ("RA Program") for all CPUC-jurisdictional load serving entities (LSE) based on the RA policy framework adopted in 2004 to ensure the reliability of electric service in California.¹ SVCE is a CPUC jurisdictional LSE and therefore must adhere to the CPUC's RA Program requirements or face penalties.

In addition to the RA Program, the CPUC launched the Integrated Resource Planning (IRP) Program in 2018 to not only establish greenhouse gas emissions (GHG) reduction targets for the electric sector but also identify procurement needed to ensure the GHG reduction targets and reliability needs of the electric system are met.² In the 2020 cycle of the IRP, the CPUC identified the need for additional clean energy resources and capacity, including firm and/or baseload clean resources, and storage resources to enable the grid integration of the large fleet of intermittent resources being used to meet GHG emissions targets, to replace several natural gas once-through-cooling (OTC) power plants that are scheduled to be shut down, and to replace the Diablo Canyon Nuclear Power Plant (DCPP), which had been slated to retire between in 2024 and 2025³.

This identification of need resulted in the CPUC issuing Decision (D.) 21-06-035, the Mid-term Reliability Procurement Order (MTR Order), requiring CPUC-jurisdictional LSEs, such as SVCE, to procure and/or develop a collective 11,500 MW of new capacity by 2026. In February 2023, the CPUC issued D.23-02-040, the Supplemental Mid-term Reliability Procurement Order (Supplemental MTR Order), requiring an additional 4,000 MW of new clean capacity to come online by 2027. SVCE's total share of the MTR Order and Supplemental MTR Order is 317 MW, which was determined based on SVCE's load ratio share of the CPUC's jurisdictional load in the Pacific Gas and Electric transmission access area. SVCE has made significant progress towards meeting its MTR obligations and continues to seek new clean resources to fully comply.

At the February 2023 Board meeting, staff provided a presentation describing reliability challenges in California given the changing nature of the grid driven by California's aggressive GHG reduction goals. Staff further explained how changes to the grid have necessitated changes to the RA Program to ensure adequate capacity supply is available to always meet demand, including days of extreme demand as witnessed during the 2020 and 2022 heatwaves. These changes include a reduction in the amount of qualifying capacity associated with intermittent renewable resources, such as solar and wind, changes to rules for use out-of-state resources, and an increase in obligations for LSEs as demonstrated through an increase in the planning reserve margin (PRM). These changes along with massive delays in bringing new clean capacity online have created a shortage of RA capacity available for California LSEs. As such, for the 2023 year-ahead RA filing period SVCE, along with many other LSEs, is facing large deficiencies and potential penalties. SVCE continues to make all efforts to procure RA for 2023 and minimize the extent of the penalties.

Additional changes to the RA Program are being considered through two active workstreams in the RA proceeding at the CPUC (Rulemaking 21-10-002): the Implementation Track Phase 3 and the Phase 2 Reform

¹ Decision 04-10-035.

² Decision 18-02-018.

³ SB 846 passed in 2022 allows for the extension of DCPP to meet grid reliability needs and shifts the cost of operating from Pacific Gas and Electric ratepayers to California's taxpayers. The state is in the process of seeking relicensing of DCPP.

Track. If the proposals currently being deliberated are adopted and implemented, the RA Program framework will become much more complex and complicate an LSE's ability to meet RA Program requirements due to the proposals likely leading to increased capacity scarcity. SVCE expects these RA Program reforms will make it increasingly difficult to meet RA obligations until new clean capacity can be brought online.

ANALYSIS & DISCUSSION

California through Senate Bill 100 (SB100) has set an aggressive goal to achieve a carbon free grid by 2045. SVCE since it first launched has set its own goal to be 100% carbon free on an annual basis with a directive to evaluate pathways to carbon-free on a 24 hour by 7 days ("24x7") a week basis to support decarbonization efforts. The transition away from natural gas to cleaner sources of electricity to meet both energy and capacity needs for reliability will likely happen over the next ten to twenty years. A portion of the fleet of natural gas power plants will likely hybridize with clean BESS or clean hydrogen while certain peaker⁴ plants will be retained until otherwise instructed to retire.

While SVCE has provided a 100% carbon-free source of energy since 2018, SVCE has met its RA Program requirements primarily through natural gas RA-only capacity contracts of terms of three years or less. RA-only contracts provide SVCE counting rights towards the RA Program by ensuring that these resources are available to the California Independent System Operator (CAISO) to be dispatched at any time of the day. SVCE is not entitled to the energy produced from facilities under RA-only contracts. These short-term natural gas RA-only contracts provide for a high amount of RA counting capacity on a per megawatt basis and up until recently, market supply was sufficient and prices were relatively stable.

SVCE's Portfolio of RA Capacity

SVCE has contracted for over two billion dollars in clean sources of energy and capacity. By 2025, assuming projects come on-line as planned, sixty-five percent of SVCE's load will be met through long-term renewable PPAs including geothermal, solar and wind. Additionally, SVCE has 451 MW of storage either paired with solar or standalone with the ability to shift 1,806 MWh. In total, SVCE has 900 MW of clean nameplate capacity. The CPUC's counting rules for intermittent or renewable resources are such that only 30% or less of the nameplate capacity may be counted towards RA Program requirements. This number is expected to decrease over time as the grid becomes saturated with intermittent resources and storage and the CPUC revisits the effectiveness.

Short-term natural gas RA-only capacity contracts account for the vast majority of SVCE's RA portfolio. In 2022, 80% of SVCE's requirements were from RA-only contracts. For 2025, staff estimates that natural gas RA-only contracts will continue to play a major role in meeting RA program needs. Table 1 is an illustration of SVCE's energy and capacity portfolio in 2025.

⁴ Peaking generating units help to meet electricity demand when demand is at its highest, or peak, such as in late afternoon and as when electricity use for air conditioning and heating increases during hot weather and cold weather respectively.

Table 1: Energy and RA Capacity Portfolio – Estimated for 2025

Estimated for 2025	Annual Energy (GWhs)	Energy Source as a Percent of Total Retail Sales	Capacity Source as a Percent of Total RA Requirement
Biomass	175	4.4%	2%
Geothermal	507	12.8%	7%
Solar	1,292	32.8%	1%
Wind	584	14.8%	2%
Large Hydroelectric	1,375	35.2%	0%
Battery Storage	0	0%	30%
Natural Gas	0	0%	58%
Total	3,933	100%	100%

Over time SVCE's reliance on natural gas RA contracts will decrease as additional storage and clean resources are added to meet RPS, MTR and the Board's clean energy directives.

Hanford

Middle River Power (MRP) owns, operates and markets the power and capacity attributes associated with Hanford. Hanford is a natural gas peaker power plant with a heat rate of 10.2 MMBtus/MWh. Hanford was built in 2001 and is located in Fresno County and within the CAISO balancing authority. The project operates under a carbon emissions limitation and is permitted with the ability to run up to 2,000 hours per year or 22.8% of the time.

SVCE is primarily interested in Hanford to meet RA Program requirements however, the project owner plans to hybridize the facility by adding a new BESS to the site. The BESS is expected to be on-line in April 2024 and will grid charge and provide arbitrage value to SVCE. The existing gas peaker is able to dispatch energy under certain market conditions and within certain operating constraints and as such MRP is selling Hanford with a toll option. The toll option gives SVCE the right, but not the obligation, to dispatch energy from the plant. The main components of the proposed Hanford PPA include:

1. 99.4 MW of capacity from existing Hanford Natural Gas Power Plant Capacity ("gas peaker unit");
2. 131.4 MW of new one-hour BESS; and
3. Up to 198,800 MWh of dispatchable energy per year from gas peaker unit ("toll")

Project Overview

Project Name	Hanford
Owner/Operator	MRP Pacifica Marketing LLC
Technology	Natural Gas Peaker Power Plant with BESS
Existing Natural Gas Power Plant Nameplate Capacity and RA Capacity	99.4 MWs
New BESS Nameplate Capacity and RA Capacity	131.4 MWs & 15.4 MWs
Maximum and Expected Dispatched Energy	Maximum: 198 GWhs Expected: 8 GWhs
Expected Commercial Operation Date & Term	April 2024; 12 Years
Location	Fresno, California
Price terms	Fixed Price Energy Toll & Resource Adequacy

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RA Capacity

The gas peaker unit is expected to provide 115.4 MW of RA eligible capacity. Because the fuel source is not intermittent, the counting capacity is relatively high or 100% of nameplate capacity. The new BESS will provide an additional 16 MW of qualifying RA capacity or 12% of nameplate. In total, SVCE will be able to demonstrate 115.4 MW of RA capacity starting in April 2024. Future RA capacity value is dependent on CPUC RA Program rules and highly susceptible to change especially for renewables and storage resources. The counting capacity for the gas peaker unit is expected to remain high throughout the term of the PPA.

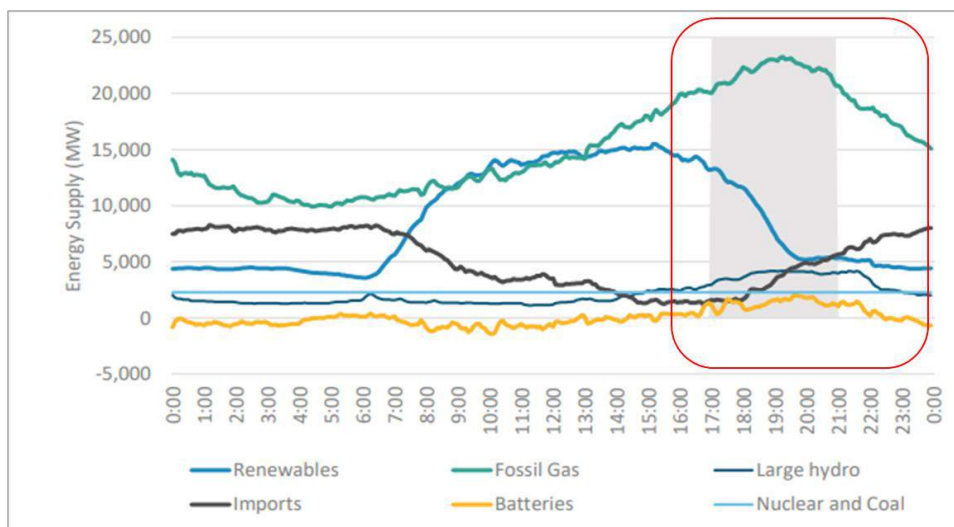
BESS

Over the life of the contract, the Hanford's BESS is expected to displace the runtime of the peaking gas facility due to the responsiveness of storage and the low-cost benefits they provide the CAISO in planning grid reliability. The expectation for the BESS is that it will charge during low emission hours, primarily when solar is generating and will shift that power to when peaking natural gas plants are generally being dispatched today. The battery system will charge and discharge once daily to complete a "cycle" of shifting energy to when it is most needed. SVCE sees this cannibalization effect of storage and gas playing out on a larger spectrum of the CAISO market and by placing the battery at the same project, the battery can further displace the Peaker by competing for the same transmission onto the grid.

Toll Option

SVCE will only dispatch the natural gas peaking facility when the CAISO market signals it is needed to sustain grid reliability. To aid in this, SVCE is acquiring optimization software to help analyze when these peak grid conditions are expected, which is made important by the limited run hours the resource can utilize over a calendar year. Lastly, extensive analysis was performed to understand the utilization rates for Hanford's peaking facility, which shows run hours to decline over the contract term.

In order to operate the facility for the next day, gas usage will be forecasted using the optimization software to estimate how much should be delivered for the peaking unit. Because the gas is delivered via pipeline and not stored, any excess or additional gas needed will be managed after-the-fact. SVCE may exercise the option to procure forward gas in order to hedge against market price volatility.



Source: CAISO System September 9, 2022

Project Merits

Overall, the economics of the project add value to SVCE's portfolio and reduce risk associated with meeting regulatory requirements for RA and MTR Procurement Order.

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With the inclusion of Hanford, the portion of capacity coming from natural gas resources in 2025 is expected to decrease by 2% due to the addition of the BESS for a total of 54% of capacity coming from clean resources. Natural gas energy coming from the project is expected to be less than a percent of load. Table 2 is an illustration of SVCE's energy and capacity portfolio in 2025 with the inclusion of Hanford.

Table 2: Energy and RA Capacity Portfolio with Hanford – Estimated for 2025

Estimated for 2025	Annual Energy (GWh)	Energy Source as a Percent of Total Retail Sales	Capacity Source as a Percent of Total RA Requirement
Biomass	175	4.4%	2%
Geothermal	507	12.8%	7%
Solar	1,292	32.8%	1%
Wind	584	14.8%	2%
Large Hydroelectric	1,375	35.2%	0%
Battery Storage (Includes Hanford BESS)	0	0%	32%
Natural Gas RA-only	0	0%	40%
Hanford – Natural Gas	Est. 8	.2%	16%
Total	3,933	100%	100%

Middle River Power

Middle River Power is a private equity sponsored asset management platform focused on US power generation assets. Their team consists of power industry veterans with deep experience in the acquisition, development, operations, management, financing, and economic optimization of energy assets. Notable assets that MRP manages include High Desert Power Plant and CalPeak.

Energy Risk Management Policy

Through Resolution 2021-25, the Board approved the latest version of the Energy Risk Management Policy ("ERM Policy"). Included in the ERM Policy is a list of products the Board has authorized the CEO to enter into. Tolling agreements are included in the list; however gas tolling agreements are not explicitly called out. By authorizing the CEO to execute the Hanford PPA, the Board will be authorizing a gas tolling transaction.

Additionally, the structure of the gas toll is such that natural gas must be purchased to run the peaker unit. The PPA will enable MRP, or its designated scheduling coordinator, to buy natural gas to run the peaker unit, however the ERM Policy does not allow for the purchase of natural gas. As such, the Board will need to make an exception to the ERM Policy to enable the procurement of natural gas to effectively manage the Hanford PPA as reflected in the attached resolution.

Emissions Mitigation Proposal

SVCE's stated mission is to "Reduce dependence on fossil fuels by providing carbon free, affordable, and reliable electricity and innovative programs for the SVCE community". Should the Board approve execution of the Hanford PPA, there will be a slight increase in emissions due to the dispatchable energy from the gas peaker unit representing less than a percent of load and 5,000 MTCO2 emissions. While these emissions are expected to decrease over time, as the BESS pushes out the peaker unit, SVCE is concerned about the impacts of the project in the near term.

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To mitigate the emissions, staff proposes to develop a fund to provide for local community benefits. The funding amount and types of programs and initiatives will be determined based on needs and stakeholder input. Approval of the staff recommendation will direct staff to return to the Board with a policy and guidelines for an emission mitigation fund associated with the Hanford PPA.

STRATEGIC PLAN

Execution of the Hanford PPA supports the goals of the Board adopted Fiscal Year 2022-23 Strategic Plan including:

- **Goal 1:** Plan for resources to meet SVCE's mission while balancing multiple stakeholder objectives
- **Goal 2:** Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner
- **Goal 3:** Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives

The Strategic Plan also includes Strategic Focus Area:

- **24x7 CLEAN ENERGY:** Explore 24x7 clean energy delivery at scale, to improve on the current 100% clean energy goal

The impacts of including the Hanford PPA in SVCE's portfolio, primarily for RA capacity, will be assessed as this Strategic Focus Area is developed.

ALTERNATIVES

The Board can decide not to approve staff's recommendation to negotiate and execute the Hanford PPA and as an alternative direct staff to find new clean sources of RA capacity. While this is consistent with SVCE's current efforts to meet a future clean grid and MTR obligations, the amount of capacity needed and therefore cost of relying exclusively on new clean capacity will not meet SVCE's affordability goals and will result in a suboptimal portfolio. Additionally, to bring new clean capacity on-line, three to five years are needed. SVCE's RA capacity needs are more immediate and failure to procure sufficient RA capacity will put SVCE at risk of non-compliance and therefore penalties.

Alternatively, SVCE could continue its current practice of short-term RA-only capacity contracts, however given the lack of resources and market prices, staff does not believe this to be a viable and therefore prudent alternative.

FISCAL IMPACT

Should the Board approve staff's recommendation including delegating authority to the CEO to execute the Hanford PPA and staff is able to effectively execute the PPA, the cost associated will be incorporated in the fiscal year 2023-2024 Operating Budget and subsequent years as required.

ATTACHMENTS

1. Resolution 2023-06 Authorizing the Chief Executive Officer to Finalize Negotiations and Execute Power Purchase Agreement with Middle River Power for the Hanford Hybrid Natural Gas Power Plant and Battery Energy Storage System; Allowing for an Exception to the Board-adopted Energy Risk Management Policy; and Directing Staff to Return with a Policy and Guidelines for Establishing a Fund to Mitigate the Impacts of Emissions Associated with the Hanford PPA
2. Draft PPA with Middle River Power

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2023-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO FINALIZE NEGOTIATIONS AND EXECUTE POWER PURCHASE AGREEMENT WITH MIDDLE RIVER POWER FOR THE HANFORD HYBRID NATURAL GAS POWER PLANT AND BATTERY ENERGY STORAGE SYSTEM; ALLOWING FOR AN EXCEPTION TO THE BOARD-ADOPTED ENERGY RISK MANAGEMENT POLICY; AND DIRECTING STAFF TO RETURN WITH A POLICY AND GUIDELINES FOR ESTABLISHING A FUND TO MITIGATE IMPACTS OF EMISSIONS ASSOCIATED WITH THE HANFORD PPA

THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY HEREBY RESOLVES AS FOLLOWS:

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

WHEREAS, launch of service for Phase I occurred in April 2017, and launch of service for the remaining Phases occurred in July 2017;

WHEREAS, the SVCE Board of Directors wishes to delegate authority to the Chief Executive Officer (“CEO”) to finalize negotiations and execute a Power Purchase Agreement (“PPA”) with Middle River Power, or its affiliate MRP Pacifica Marketing LLC, for Resource Adequacy with Dispatchable Energy from its Hanford Hybrid Natural Gas Power Plant and Battery Energy Storage System for a term not to exceed twelve years and in an amount not to exceed \$280,000,000 over the life of the PPA with the following parameters:

- a. Resource Adequacy (RA) capacity from existing Hanford Natural Gas Power Plant of 99.4 megawatts (MW)
- b. Additional RA capacity from a new Battery Energy Storage System (BESS) of 16 MW sited adjacent to Hanford with an expected 13.97 MW to count towards the Mid-term Reliability Procurement Order and with expected commercial on-line date of April 1, 2024 date and delivery through April 30, 2036
- c. Dispatchable energy from the Natural Gas Peaker Power Plant subject to operating constraints and to meet demand under certain market and grid conditions;

WHEREAS, SVCE first adopted an Energy Risk Management Policy in February 2017, which allowed SVCE to transact in the California Independent System Operator (CAISO) congestion market;

WHEREAS, in 2017, 2019, and 2021, the Board approved revisions to the Policy;

WHEREAS, Staff has identified that by authorizing the CEO to execute the Hanford Hybrid Natural Gas Power Plant and Battery Energy Storage System, the Board will be authorizing a gas tolling transaction which is not explicitly called out in the existing Policy;

WHEREAS, the Board will need to make an exception to the Policy to enable the procurement of natural gas to effectively manage the Hanford PPA;

WHEREAS, the Board wishes to direct staff to develop a policy and/or guidelines to set aside funds to be used for programs and/or projects to mitigate emissions associated with energy produced by the Hanford project resulting from this PPA and return to the Board by the December 2023 Board meeting with a recommendation.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The Board hereby delegates authority to the Chief Executive Officer (CEO) to finalize negotiations and execute a Power Purchase Agreement (PPA) with Middle River Power, or its affiliate MRP Pacifica Marketing LLC, for Resource Adequacy with Dispatchable Energy from its Hanford Hybrid Natural Gas Power Plant and Battery Energy Storage System ("Hanford") for a term not to exceed twelve years and in an amount not to exceed \$280,000,000 over the life of the PPA with the following parameters:

- a. Resource Adequacy (RA) capacity from existing Hanford Natural Gas Power Plant of 99.4 megawatts (MW)
- b. Additional RA capacity from a new Battery Energy Storage System (BESS) of 16 MW sited adjacent to Hanford with an expected 13.97 MW to count towards the Mid-term Reliability Procurement Order and with expected commercial on-line date of April 1, 2024 date and delivery through April 30, 2036
- c. Dispatchable energy from the Natural Gas Peaker Power Plant subject to operating constraints and to meet demand under certain market and grid conditions;

Section 2. The Board provides for an exception to the Board-approved Policy to allow for procurement of natural gas to manage risk associated with the Natural Gas Peaker Plant toll portion of the Hanford project, if necessary; and

Section 3. The Board directs staff to develop a policy and/or guidelines to set aside funds to be used for programs and/or projects to mitigate emissions associated with energy produced by the Hanford project resulting from this PPA and return to the Board by the December 2023 Board meeting with a recommendation.

ADOPTED AND APPROVED this 12th day of April 2023, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Scozzola				
City of Cupertino	Director Mohan				
City of Gilroy	Director Hilton				
City of Los Altos	Director Meadows				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Mekechuk				
City of Morgan Hill	Alternate Director Carothers				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Alternate Director Srinivasan				

Chair

ATTEST:

Andrea Pizano, Board Clerk

APPROVAL VERSION
7 APRIL 2023

DISPATCHABLE ENERGY AND ENERGY STORAGE AGREEMENT

COVER SHEET

(Hanford)

Seller: MRP Pacifica Marketing LLC, a Delaware limited liability company

Buyer: Silicon Valley Clean Energy Authority, a California joint powers authority

Effective Date: [____], 2023

Facility Descriptions: a natural gas-fired power plant with a nameplate capacity of 99.4 MW and a battery energy storage system (BESS) with a nameplate capacity of 131.4 MW, co-located in Kings County, California, as further described in Exhibit A (the “**Facility**”).

RA Contract Quantity:	115.4 MW <u>Baseline Net Qualifying Capacity:</u> 99.4 MW <u>Incremental Capacity:</u> 16.0 MW (excluding any adjustments for the effective load carrying capacity or other regulatory reporting adjustments adopted by the CPUC or CAISO)
RA Reservation Price:	[REDACTED]
RA Reservation Payment:	[REDACTED]
Energy Contract Quantity:	131.4 MW
Energy Reservation Price:	[REDACTED]
Energy Reservation Payment:	[REDACTED]
Variable O&M Rate:	[REDACTED]

Milestone	Completion Date
Expected Commercial Operation Date	[REDACTED]
System RA Start Date	[REDACTED]
Local RA Start Date	[REDACTED]
Local Area	Fresno

Gas Turbine Specifications	
Generating Capacity (MW)	99.4
Guaranteed Heat Rate	
Daily Start Limit	
Annual Run Hour Limit	
Point of Interconnection	
Thermal Resource PNode	GWFPWR_1_UNITSAPND

BESS Specifications	
Storage Contract Capacity (MW/1 hr. discharge)	131.4 MW
Storage Energy (MWh)	131.4 MWh
Guaranteed Storage Availability	
Guaranteed Efficiency Rate	
Annual Cycle Limit	
Point of Interconnection	
BESS Resource PNode	To be provided prior to COD

Gas Distribution Utility	
Gas Distribution Utility	Southern California Gas Co.
Gas Utility Receipt Point	SoCal City Gate

Delivery Term: Twelve (12) Contract Years following the System RA Start Date.

Product:

- ☒ Resource Adequacy Benefits
- ☒ Facility Energy
- ☒ Ancillary Services

Scheduling Coordinator: Seller or Seller's agent

Seller Payment Security:

Development Security: [REDACTED]
Performance Security: [REDACTED]

Special Provisions:

1. End of Term Shutdown Option. Provided that this Agreement is not terminated due to an Event of Default or Force Majeure Event, at the expiration of the Delivery Term, Buyer shall have the option to direct Seller to decommission the Thermal Resource (the “**Shutdown Option**”). To exercise the Shutdown Option, Buyer must

[REDACTED]

The decommissioning of the Thermal Resource shall be performed in accordance with all applicable Laws and Seller shall take such actions as necessary or appropriate to ensure that future electricity generating facilities developed at the Facility site have no “Scope 1” carbon emissions as defined in the World Resource Institute’s “The Greenhouse Gas Protocol” in effect on the date the Thermal Resource is decommissioned.

2. Right of First Offer.

[REDACTED]

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DISPATCHABLE ENERGY AND ENERGY STORAGE AGREEMENT

This Dispatchable Energy and Energy Storage Agreement (“**Agreement**”) is entered into as of Effective Date between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller or its Affiliates owns and operates the Thermal Resource;

WHEREAS, Seller or its Affiliates intends to, develop, design, permit, construct, own, and operate the BESS Resource; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.7(e).

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternating Current**” or “**AC**” means alternating current.

“**Ancillary Services**” has the meaning set forth in the CAISO Tariff.

“**Annual Cycle Limit**” means the maximum number of times the BESS Resource can be Cycled each Contract Year as set forth on the Cover Sheet.

“**Annual Run Hour Limit**” means the maximum number of hours the Thermal Resource can be operated each year as set forth on the Cover Sheet.

“**Available**” means that the BESS Resource is available either to be charged or discharged.

“**Availability Adjustment Factor**” has the meaning set forth in Exhibit E.

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Bankrupt**” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Baseline Net Qualifying Capacity**” means that amount of capacity identified on the Cover Sheet as the “Baseline Net Qualifying Capacity”, which capacity is not required to be Incremental Capacity.

“**BESS Resource**” means the battery energy storage plant identified in Exhibit A as the “BESS Resource” at the Facility as further described in Exhibit A.

“**BESS Resource Meter**” means the meter used to measure Charging Energy and the Discharging Energy.

“**BESS Resource Metering Point**” means the location or locations of the BESS Resource Meters.

“**BESS Resource PNode**” means the BESS Resource PNode identified on the Cover Sheet, as such location may be redesignated from time to time.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 AM and ends at 5:00 PM Pacific Prevailing Time (PPT).

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Default**” means an Event of Default of Buyer.

“**CAISO**” means the California Independent System Operator Corporation.

“**CAISO Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement (as such term is defined in Appendix A to the CAISO Tariff) or the Operating Procedures, on the one hand, and the CAISO Tariff, on the other hand, the CAISO Tariff will control.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can accept at or deliver to the applicable Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Carbon Allowances” means compliance instruments identified in Title 17 California Code of Regulations Sections 95820 and 95821, and any replacements thereof, eligible for use to comply with the California Cap and Trade Program (Title 17 California Code of Regulations Sections 95801-96022), as the same may be amended or modified from time to time.

“Carbon Emission Regulations” means those regulations that may be adopted from time to time by the State of California pertaining to limiting, taxing, charging for or otherwise regulating carbon dioxide emissions including, but not limited to, California Cap and Trade Program (Title 17 California Code of Regulations Sections 95801-96022).

“Change in Law” means the adoption, promulgation, taking effect of, implementation or modification of any Law by a Governmental Authority after the Effective Date that relates to the regulation or control of any emissions associated with the Thermal Resource.

“Charging Energy” means (i) the Energy delivered to the BESS Resource from the CAISO Grid pursuant to a Charging Notice as measured at the BESS Resource Metering Point by the BESS Resource Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“Charging Notice” means the operating instruction, and any subsequent updates, given by the SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Claim” has the meaning set forth in Section 17.2.

“COD Delay Damages” means an amount equal to [REDACTED]

“Commercial Operation” means the conditions for commercial operation of the BESS Resource set forth in Exhibit B have been satisfied.

“Commercial Operation Date” means the date on which Commercial Operation is achieved and the conditions set forth in Section 2.2 have been satisfied.

“Compliance Actions” has the meaning set forth in Section 3.7(c).

“Compliance Costs” has the meaning set forth in Section 3.7(c).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.7(c).

“Compliance Showings” means the (a) the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings), and (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“Confidential Information” has the meaning set forth in Section 19.1.

“Construction Delay Damages” means an amount equal to [REDACTED].

“Contract Price” has the meaning set forth in Section 9.1.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months beginning on the System RA Start Date or an anniversary thereof and ending at midnight at the end of the day prior to the applicable anniversary of such System RA Start Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“CPI-U” means the Consumer Price Index for All Urban Consumers published monthly by the U.S. Bureau of Labor Statistics.

“CPM Capacity” has the meaning set forth in the CAISO Tariff.

“CPM Capacity Payment” has the meaning set forth in the CAISO Tariff.

“CPUC” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“**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.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) 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 or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Daily Start Limit**” means the maximum number of times the Thermal Resource can be started each day as set forth on the Cover Sheet.

“**Damage Payment**” means the dollar amount that equals the amount of the Development Security less any Construction Delay Damages and COD Delay Damages received by Buyer.

“**Dealer**” means an entity or person that buys or sells power and takes title to the power at some point.

“**Defaulting Party**” has the meaning set forth in Section 12.1(a).

“**Delivery Point**” shall mean the Thermal Resource PNode or the BESS Resource PNode, as applicable.

“**Delivery Term**” has the meaning set forth on the Cover Sheet.

“**Development Security**” means (i) cash or (ii) a Letter of Credit, in each case in the amount set forth on the Cover Sheet for “Development Security”.

“**Discharging Energy**” means all Energy delivered to the Delivery Point from the BESS Resource, net of the Electrical Losses, as measured at the BESS Resource Metering Point by the BESS Resource Meter. All Discharging Energy will have originally been delivered to the BESS Resource from the CAISO Grid as Charging Energy.

“**Discharging Energy Meter**” means the meter used to measure the Discharged Energy.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures.

“**Dispatchable Energy**” means all Energy delivered by the Thermal Resource.

“**Drawing Party**” has the meaning set forth in Section 9.9.

“**Early Termination Date**” has the meaning set forth in Section 12.2(a).

“**Efficiency Rate**” means the round-trip efficiency of the BESS Resource determined in accordance with Exhibit C.

“**Effective Date**” has the meaning set forth on the Cover Sheet.

“**Electrical Losses**” means, subject to meeting any applicable CAISO requirements and in accordance with Section 8.1, losses of Energy along with all transmission or transformation losses between the Delivery Point and the Facility.

“**Energy**” means alternating current electrical energy measured in MWh.

“**Energy Contract Quantity**” has the meaning set forth on the Cover Sheet.

“**Energy Meter**” means the meters used to measure Charging Energy, Discharging Energy and Dispatchable Energy, as applicable.

“**Energy Reservation Payment**” has the meaning set forth on the Cover Sheet.

“**Energy Reservation Price**” has the meaning set forth on the Cover Sheet.

“**Environmental Attributes**” means any and all environmental characteristics, environmental claims, environmental credits, environmental benefits, environmental emissions reductions, environmental offsets, environmental allowances and environmental allocations, existing now or in the future, howsoever characterized, denominated, measured or entitled, attributable to the generation of Energy from the Facility.

“**Excused Event**” has the meaning set forth in Exhibit E.

“**Expected Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**Event of Default**” has the meaning set forth in Section 12.1.

“**Facility**” means the energy generation and storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy generation and storage facility), located at the Site and related generation, storage and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), and as such generation and storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement. This equipment includes but is not limited to gas turbine engines, transformers, batteries, fire suppression, thermal management, enclosures, and inverters.

“**Facility Energy**” means the Discharging Energy and the Dispatchable Energy.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Financial Security**” means the Development Security or the Performance Security, as applicable.

“Financing Party” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage and/or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Forecasting Agreement” has the meaning set forth in Section 2.4(a).

“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.

“Force Majeure Event” has the meaning set forth in Section 11.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility or any outage of the Transmission System that prevents Seller from making Facility Energy available at the applicable Delivery Point and that is not the result of a Force Majeure Event.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

“Gas Distribution Utility” has the meaning set forth on the Cover Sheet.

“Gas Utility Receipt Point” has the meaning set forth on the Cover Sheet.

“Gas Meter” means the measuring the natural gas supplied to the Thermal Resource.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include (i) with respect to Seller, those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Project and (ii) with respect to Buyer, those federal

licenses and state market participation agreements necessary or appropriate to take delivery of and resell electricity.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Guaranteed Commercial Operation Date” has the meaning set forth in Exhibit B.

“Guaranteed Efficiency Rate” means the percentage specified on the Cover Sheet.

“Guaranteed Heat Rate” means the percentage specified on the Cover Sheet.

“Guaranteed Storage Availability” has the meaning set forth on the Cover Sheet.

“Heat Rate” has the meaning set forth in Exhibit C.

“Hold-Back Capacity” has the meaning set forth in Section 4.5.

“Indemnifiable Loss(es)” has the meaning set forth in Section 17.1.

“Incremental Capacity” means that quantity of capacity identified on the Cover Sheet as Incremental Capacity, which capacity was not included in the CPUC’s 2019-2020 IRP RESOLVE/SERVM baseline generator list identified in CPUC Decision 21-06-035.

“Interconnection Agreement” means the interconnection agreements among Seller (or Seller’s Affiliate), the CAISO, and the Participating Transmission Owner, pursuant to which (i) the Thermal Resource will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Thermal Resource that is no less than the Baseline Net Qualifying Capacity, (ii) the BESS Resource will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the BESS Resource that is no less than the Energy Contract Quantity, and pursuant to which the applicable Interconnection Facilities and any other Interconnection Facilities have or will be constructed, operated and maintained during the Delivery Term.

“Interconnection Delays” means any delay in achieving Commercial Operation due to any delay in obtaining the Interconnection Agreement or completing the Interconnection Facilities under the Interconnection Agreement provided that in either case Seller has taken actions consistent with Prudent Industry Practices to obtain the Interconnection Agreement and cause the applicable Interconnection Facilities to be completed.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 9.3.

“Investment Grade Credit Rating” means a Credit Rating of (i) BBB- or higher by S&P and Baa3 or higher by Moody’s if the Person is rated by both agencies, or (ii) a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s if the Person is rated by only one of the agencies.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated March 31, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank, or U.S. branch of a foreign bank, with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit D.

“Local RA Start Date” has the meaning set forth on the Cover Sheet.

“Local RAR” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“Local RAR Attributes” means, with respect to the Facility, any and all Resource Adequacy Benefits of the Facility, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction over Local RAR that can be counted toward Buyer’s Local RAR.

“Losses” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.

“Monthly Storage Availability” has the meaning set forth in Exhibit E.

“Moody’s” means Moody’s Investors Service, Inc.

“MTR Mandate” means the mandatory procurement obligations pursuant to the CPUC Decision No. 21-06-036 for procurement of capacity that was not included in the CPUC’s 2019-2020 IRP RESOLVE/SERVM baseline generator list identified in CPUC Decision 21-06-035.

“Must Offer Obligations” means the obligation to bid or cause the SC to bid the applicable resource into the CAISO Markets in order for the applicable resource to qualify to deliver Resource Adequacy Benefits.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 12.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or email in accordance with Article 10.

“Notice of Claim” has the meaning set forth in Section 17.2.

“Notification Deadline” means twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Operating Procedures” means those rules, requirements, and procedures developed pursuant to Section 2.2 consistent with Exhibit H, as the same may be modified from time to time in accordance with this Agreement.

“Pacific Prevailing Time” means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner for the Facility is set forth in Exhibit A.

“Party” or **“Parties”** has the meaning set forth in the Preamble.

“Performance Security” means (i) cash, (ii) a Letter of Credit or (iii) guaranty in form and substance acceptable to Buyer, acting reasonably and in good faith, in each case in the amount

set forth on the Cover Sheet for “Performance Security.

“**Permitted Transferee**” means (i) any Affiliate of Seller (ii) any entity that has, or is controlled by another Person that has at least three (3) years of experience in the ownership and operations of power generation and storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility, or (iii) any other entity approved in writing by Buyer acting reasonably and in good faith.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” has the meaning set forth in Exhibit I.

“**Present Value Rate**” has the meaning set forth in Section 12.3(b)(ii).

“**Product**” has the meaning set forth on the Cover Sheet.

“**Prudent Industry 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 utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage or standalone storage facilities in the Western United States, or (b) any of the practices, methods and acts which, 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 Industry 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 industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage or stand-alone storage in the Western United States. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**RA Contract Quantity**” has the meaning set forth on the Cover Sheet.

“**RA Delivered Quantity**” means the RA Contract Quantity less any Resource Adequacy Benefits that are unavailable from the Facility due to the acts or omissions of Seller in breach of the CAISO Tariff or this Agreement plus any Replacement RA, but in any event not to exceed the RA Contract Quantity.

“**RA Product**” has the meaning set forth in Section 4.2(a).

“**RA Reservation Payment**” has the meaning set forth on the Cover Sheet.

“**RA Reservation Price**” has the meaning set forth on the Cover Sheet.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and any Local RAR; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the Notification Deadline. In addition, if the CPUC issues a decision that requires Replacement RA to be provided by an incremental resource for purposes of CPUC Decision 21-06-035 in order for Buyer’s purchase of the Incremental Capacity to satisfy the MTR Mandate, then the Replacement RA must also be provided by an incremental resource for purposes of CPUC Decision 21-06-035.

“Replacement Unit” has the meaning set forth in Section 4.3.

“Reserved Capacity” has the meaning set forth in Section 5.1.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility associated with the RA Contract Quantity that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

“Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 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 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, and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“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.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

“SC Agreement” has the meaning set forth in Section 2.3(a).

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“Scheduling Coordinator” or **“SC”** means an entity certified by the 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.

“Seller” has the meaning set forth on the Cover Sheet.

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be Zero Dollars (\$0).

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Shared Facilities Agreement” has the meaning set forth in Section 6.3.

“Showing Month” means the calendar month of the Delivery Term that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means the Thermal Resource, the BESS Resource, or any Replacement Unit, as applicable.

“Site” means the applicable real property on which the Facility is or will be located, as further described in Exhibit A.

“Standalone Energy Storage Incentives” means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction or ownership of the BESS Resource (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the BESS Resources; and (c) any other form of incentive relating in any way to the BESS Resources that is not an Environmental Attribute associated with Charging Energy.

“Station Power” means:

(a) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) the Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“Storage Capacity” means the maximum dependable capability of the BESS Resource to discharge Energy at a particular moment.

“Storage Capacity Test” means any test or retest of the capacity of the BESS Resource and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.11 and Exhibit F.

“Storage Contract Capacity” has the meaning set forth on the Cover Sheet.

“Storage Energy” means the total quantity of electric energy measured in MWh that can be stored by the BESS Resource as set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

“Subsequent Buyer” means the purchaser of RA Product from Buyer in a re-sale of RA Product by Buyer.

“Substitute Capacity” means “RA Substitute Capacity” as defined in the CAISO Tariff.

“Substitute Capacity Request” has the meaning set forth in Section 4.5(b).

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“System RA Start Date” has the meaning set forth in the Cover Sheet.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Terminated Transaction” has the meaning set forth in Section 12.1(a).

“Termination Payment” has the meaning set forth in Section 12.3.

“Test Energy” has the meaning set forth in Section 3.6.

“Thermal Resource” means the natural gas-fired turbine electricity generating power plant at the Facility as described in Exhibit A.

“Thermal Resource PNode” means the BESS Resource PNode identified on the Cover Sheet, as such location may be redesignated from time to time.

“Transmission Provider” means any entity or entities transmitting or transporting Facility Energy on behalf of Seller or Buyer from the applicable Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Points.

“Unavailable” means that the BESS Resource is not available to be charged nor to be discharged.

“Variable O&M Rate” has the meaning set forth on the Cover Sheet.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Industry Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; COMMERCIAL OPERATION; OPTIMIZATION SERVICES

2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.2 **Conditions Precedent.** The Commercial Operation Date shall not occur until the following conditions have been satisfied:

(a) Seller has delivered to Buyer (i) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit L and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit M setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and/or a Participating Load Agreement and a Meter Service Agreement for the BESS Resource between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller (or its Affiliate or a third party transmission entity, if a sharing arrangement permitted by this Agreement is in effect) and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required for operation of the BESS Resource have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied

on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has obtained all real property rights, including Site Control, required for the operation of the BESS Resource during the Delivery Term, and Seller has provided evidence of such rights to Buyer;

(f) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer; and

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 9.8; and

(h) Seller has paid Buyer for all amounts then owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

At least ninety (90) days prior to the Commercial Operation Date, Seller shall deliver Notice to Buyer of the anticipated Commercial Operation Date and the proposed Operating Procedures, which Operating Procedures shall be consistent with, and no less restrictive than, the technical, operational and decision-making parameters or procedures described in Exhibit H. The Parties shall meet periodically upon the written request of either Party, but in any event no less than once per Contract Year, to evaluate potential changes to the Operating Procedures.

2.3 Scheduling Services.

[REDACTED]

(b) During the Delivery Period, Seller's designee under the SC Agreement shall be responsible for performing all obligations under this Agreement that are appropriate or required to be performed by a Scheduling Coordinator. Buyer shall provide guidance and direction directly to the Scheduling Coordinator to optimize the dispatch of the Facility and procure natural gas, and Buyer's instructions shall be controlling. During the Delivery Period, Seller shall take, or cause the Facility's SC to take, all necessary steps to qualify itself and the Facility in such other manner identified and approved by the CAISO and CPUC that permits Seller to sell and deliver any and all Resource Adequacy Benefits and other Capacity Attributes to Buyer. In addition to the requirements of Exhibit N, Seller shall cause the Facility's SC to comply, with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, including any bidding of the Facility to meet any Must Offer Obligations, in order to deliver or maintain the right to deliver Resource Adequacy Benefits and other Capacity Attributes to Buyer.

(c) Seller and Buyer shall conduct meetings on a quarterly basis or as otherwise reasonably requested by Buyer to discuss the overall performance of the provider under the SC Agreement. Based on the information exchanged during such discussions, Seller shall use commercially reasonable efforts to implement any changes to the overall strategy or performance objectives identified in this meeting.

(d) If Buyer determines that the Scheduling Coordinator is not performing its obligations under the SC Agreement to Buyer's reasonable satisfaction, Buyer shall have the right to request that Seller replace the Scheduling Coordinator. Following receipt of such notice, Seller shall use reasonable commercial efforts to identify an alternate service provider and negotiate a new SC Agreement but shall not enter into the new SC Agreement until and unless Buyer has approved such agreement in writing. Following such approval, Seller shall use reasonable commercial efforts to promptly terminate the existing SC Agreement such that the new SC Agreement starts on termination of the existing SC Agreement. Buyer shall be liable for the termination penalties under the SC Agreement, except to the extent arising due to the negligence or misconduct of Seller, provided, however that (i) Seller shall use reasonable commercial efforts to minimize any penalties and enforce any rights to terminate for cause and without liability to Buyer and (ii) if the existing SC Agreement is terminated at Buyer's direction without cause, notwithstanding any provision to the contrary herein, Buyer's maximum liability for any associated termination penalty shall not exceed an amount equal to the monthly recurring fees under SC Agreement for the [REDACTED] period following termination of the SC Agreement.

2.4 Forecasting Services.

(a) [REDACTED]

[REDACTED]

[REDACTED]

(c) Seller and Buyer shall conduct meetings on a quarterly basis or as otherwise reasonably requested by Buyer to discuss the overall performance of the provider under the Forecasting Agreement. Based on the information exchanged during such discussions, Seller shall use commercially reasonable efforts to implement any changes [REDACTED]

2.5 **Financial Responsibility for Scheduling and Forecasting Services.**

(a)

(b) The Parties acknowledge and agree that Seller will not be directly performing SC services. Seller shall not be responsible for the financial results of Buyer's dispatch instructions to the SC, but shall be responsible for the SC's failure to implement such instructions in accordance with the requirements of this Agreement, including Prudent Industry Practice and the requirements of the CAISO Tariff. Seller will use reasonable efforts to ensure that the SC Agreement has a provision identifying Buyer as a third-party beneficiary of the SC Agreement and entitling Buyer to have direct recourse against the SC for remedies, including breach of contract and indemnification.

**ARTICLE 3
PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product associated with the Facility at the Contract Price, and Seller shall supply and deliver to Buyer all the Product associated with the Facility. During the Delivery Term, Buyer will have exclusive rights, subject to compliance with the Operating Procedures, to offer, bid, or otherwise submit the Product from the Facility for sale in the available markets, and retain and receive any and all related revenues.

(a) **Facility Energy.** Buyer's right to Facility Energy is limited to the maximum quantity of Energy that can be produced by the Energy Contract Quantity. Buyer may elect to schedule any combination of Dispatchable Energy and Discharge Energy, but the total quantity may not exceed the Energy Contract Quantity in any hour.

(b) **Ancillary Services.** Buyer's right to Ancillary is limited to those Ancillary Services that can be provided from Energy up to the Energy Contract Quantity, and specifically excludes any Ancillary Services that interfere or conflict with the ability to supply the Resources Adequacy Benefits. Buyer may elect to schedule Ancillary Services from any combination of Dispatchable Energy and Discharge Energy, but the total quantity may not exceed the quantity of Ancillary Services that can be provided from the Energy Contract Quantity in any hour.

(c) **Environmental Attributes.** Buyer shall own all Environmental Attributes associated with (i) the generation of electricity by the Thermal Resource and (ii) the Charging Energy.

3.2 **Ownership of Standalone Energy Storage Incentives.** Seller shall own and may assign or sell, in its sole discretion, all right, title and interest to any Standalone Energy Storage Incentives associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the Charging Energy or Discharging Energy, in each case that currently exist or as may become available due to any change in Law.

3.3 **Capacity Attributes.** Seller shall own and may assign or sell, in its sole discretion, all right, title and interest to any Capacity Attributes associated with or resulting from the development, installation, ownership or operation of the Facility or the production, sale, purchase or use of the Facility Energy, in each case that currently exist or as may become available due to any change in Law, except to the extent such Capacity Attributes are necessary to deliver the RA Contract Quantity. Buyer shall cooperate with Seller in connection with Scheduling any such Capacity Attributes sold to third parties.

3.4 **Variable O&M.** During the Delivery Term, Buyer shall pay the Variable O&M to Seller for all Dispatchable Energy pursuant to the invoicing and payment provisions set forth in Section 9.1.

3.5 **Reservation Payment.** During each month of the Delivery Term, Buyer shall pay the monthly RA Reservation Payment and, following the Commercial Operation Date, the Energy Reservation Payment, to Seller pursuant to the invoicing and payment provisions set forth in Section 9.1.

3.6 **Test Energy.** To the extent any electricity is delivered to Buyer from the Facility prior to the Commercial Operation Date (“**Test Energy**”), delivery of such Test Energy shall not be evidence that Commercial Operation has been achieved or that the BESS Resource has been placed in service.

3.7 **Emissions.**

(a) **Carbon Emissions.** The Parties acknowledge and agree that presently the cost for the Facility complying with the Carbon Emission Regulations is included in the tariffs charged by the Gas Distribution Utility. To the extent there is any change in the operations of the Facility or any Change in Law that changes how the Carbon Emission Regulations are being implemented, Seller shall be responsible for taking those actions necessary or appropriate to comply with any such Change in Law and Buyer shall reimburse Seller for the reasonable and documented costs associated therewith in accordance with and, except with respect to Carbon Allowances, subject to Section 3.7(c) below. With respect to Carbon Allowances, Buyer shall reimburse Seller for the reasonable and documented costs associated therewith without regard to Section 3.7(c) below.

(b) **Other Air Emissions.** Seller represents and warrants that presently the Facility has the necessary air emission permits (excluding those associated with Carbon Emission Regulations) to operate as it has historically operated. To the extent there is any change in the operations of the Facility or any Change in Law that changes the air emission permits or Seller’s cost of complying with such air emission permits, Seller shall be responsible for taking those actions necessary or appropriate to comply with any such Change in Law and Buyer shall

reimburse Seller for the reasonable and documented costs associated therewith in accordance with and subject to Section 3.7(c) below.

(c)

[REDACTED]

(d) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(e) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(f) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(g) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a Change in Law through the payment or incurrence of costs, then Seller shall be excused from the corresponding Compliance Actions under this Agreement and may, without liability to Buyer or any reduction in Buyer’s payment obligations, suspend performance under this Agreement, including obligations to offer, schedule or dispatch the Facility and any Products, to the extent performance is restricted by the Change in Law.

3.8 **CPUC Mid-Term Reliability Requirements.** The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision 21-06-035. Seller represents and warrants to Buyer that, except with respect to the Reserved Capacity:

(a) The Product includes the exclusive right to claim the Capacity Attributes of the BESS Resource as an incremental resource for purposes of CPUC Decision 21-06-035;

(b) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the BESS Resource as an incremental resource for purposes of CPUC Decision 21-06-035 to any other person or entity during the Delivery Term; and

(c) Seller will provide additional information and documentation to Buyer if necessary to enable Buyer to demonstrate that the Incremental Capacity of the BESS Resource meets the procurement mandates set forth in CPUC Decision 21-06-035.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Product Delivery.** Subject to the provisions of this Agreement, during the Delivery Term:

(a) Seller shall supply and deliver the Product to Buyer, and Buyer shall accept and pay for the Product, in accordance with the terms of this Agreement. Notwithstanding anything herein to the contrary, Seller shall have no obligation to deliver any Resource Adequacy Benefits prior to the System RA Start Date, to deliver any Local RAR Attributes prior to the Local RA Start Date, or to make the BESS Resource available prior to the Commercial Operation Date.

(b) Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with Station Power.

(c) Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with: (i) the delivery of Charging Energy to the Delivery Point for the BESS Resource (including the cost of the Charging Energy itself and associated Electrical Losses), and (ii) the acceptance and transmission of Discharging Energy and Dispatchable Energy at and from the applicable Delivery Point, including without limitation, transmission costs and transmission line losses with regard to (i) and (ii). Charging Energy, Discharging Energy, Dispatchable Energy, Resource Adequacy Benefits and other Products will be Scheduled and delivered to the CAISO by the Scheduling Coordinator.

4.2 **Transfer of Resource Adequacy Benefits.**

(a) Seller shall transfer the Resource Adequacy Benefits and, if applicable, Replacement RA from Replacement Units (the “**RA Product**”) to Buyer by submitting Supply Plans to CAISO for the Shown Unit(s).

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO 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 CAISO Tariff and CPUC requirements to identify and confirm the RA Product delivered in accordance with Buyer’s instructions for each Showing Month of the Delivery Term.

(c) If CAISO rejects the Supply Plan or the Resource Adequacy Plan with respect to any part of the RA Product for the Facility in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan for validation before the applicable deadline for the Showing Month.

(d) The RA Product is received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer’s instructions, including Buyer’s instructions to withhold

all or part of the RA Product for such Showing Month, has been accepted for the RA Product from the Shown Unit(s) by CAISO. Seller has failed to transfer the RA Product under this Section 4.2 if (i) Buyer has elected to submit the RA Product from the Shown Unit(s) 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 due to the acts or omissions of Seller notwithstanding performance of the Parties' obligations in Section 4.2(c) or (ii) Seller fails to submit the volume of RA Product for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Seller will not have failed to properly transfer the RA Product if Buyer fails or chooses not to submit the Shown Unit(s) and the RA Product in its Resource Adequacy Plan with the CPUC or CAISO.

(e) Hold-Back Capacity, if any, is deemed RA Product received by Buyer, unless utilized under Section 4.5 as Substitute Capacity, then RA Product is considered received according to the requirements therein.

4.3 Seller's Option To Provide Alternate Capacity. If Seller is unable to provide the Resource Adequacy Benefits from the Facility for a Showing Month for any reason, including, without limitation, as provided in Section 4.9, then Seller may, at no cost to Buyer, provide Buyer with Replacement RA from one or more replacement units having the same Capacity Attributes as the Facility (each such unit, a "**Replacement Unit**") in an amount such that the total amount of RA Product provided to Buyer from the Facility and any Replacement Unit(s) for each Showing Month is not more than the RA Contract Quantity, provided that in each case:

(a) Seller shall notify Buyer in writing of its intent to provide Replacement RA and shall identify the proposed Replacement Units from which such Replacement RA shall be provided no later than the Notification Deadline for Buyer's Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit, a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Buyer's Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 4.3(a), (b) and (c) 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 Agreement for that Showing Month; and

(e) The designation of any Replacement Unit(s) by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld.

(f) In no event shall a Replacement Unit utilize coal or coal materials as a source of fuel. A Replacement Unit must be a specific resource that is connected directly to the CAISO-controlled grid or be under the operational control of CAISO. A Replacement Unit may not be an unspecified import.

(g) Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 4.3 and Buyer has approved such Replacement Units as consistent with this Agreement, then any such Replacement Units shall be deemed a Shown Unit for purposes of this Agreement for that Showing Month. Buyer'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.

4.4 **Buyer's Re-Sale of RA Product.**

(a) Buyer may re-sell all or part of the RA Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 4.4. For any such resale, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of the Subsequent Buyer. Seller shall, or shall cause the Shown Unit's SC, to follow Buyer's instructions with respect to providing such resold RA Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Agreement. 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 Buyers to use such resold RA Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Shown Unit's SC to comply with this Agreement, Seller will be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the RA Product.

(b) Buyer shall notify Seller in writing of any resale of RA Product and the Subsequent Buyer no later than two (2) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product. Buyer shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the deadline for the Compliance Showing for each Showing Month for which Buyer has resold the RA Product.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product for re-sale into such market, and Seller and the Shown Unit's SC shall comply with the Buyer's direction and Buyer shall retain and receive all revenues from such re-sale.

(d) Buyer shall have the exclusive right to direct the Seller or the Shown Unit's SC to offer, bid, or otherwise submit the RA Product into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Shown Unit's SC shall comply with the Buyer's direction and, to the extent that the CAISO designates the RA Product as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall cause the Shown Unit's SC to not, offer any portion of the RA Product to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Incremental Capacity as CPM Capacity, then Seller shall, and shall cause the Shown Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Shown Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

4.5 **Hold-Back and Substitute Capacity.**

(a) 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 Shown Unit's SC not to list, in the Shown Unit's Supply Plan a portion or all of the RA Product for such Showing Month ("**Hold-Back Capacity**"). The amount of RA Product that is the subject of Buyer's request for Hold-Back Capacity shall be deemed RA Product received by Buyer consistent with Section 4.2 for purposes of calculating the payments due hereunder, unless utilized under Section 4.5(b) as Substitute Capacity, then RA Product is considered received according to the requirements therein. Seller shall, or shall cause the Shown Unit's SC to, comply with Buyer's request under this Section 4.5.

(b) In any Showing Month in which Buyer has designated Hold-Back Capacity, Buyer may request, in writing, that Seller make the Hold-Back Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month ("**Substitute Capacity Request**") with the following schedule:

(i) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO prior to the Showing Month (e.g., through the CAISO RA Substitute Capacity Assessment), the Substitute Capacity Request shall be received by Seller at least two (2) Business Days prior to the applicable CAISO scheduling deadline. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.5(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

(ii) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO after the commencement of the Showing Month, the Substitute Capacity Request shall be received by Seller at least five (5) Business Days before Buyer submits its Substitute Capacity in the CIRA Tool. Seller shall, or shall cause the Replacement Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 4.5(b), provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Facility due to a Planned Outage or a Forced Outage, Seller shall not have any liability for such failure.

4.6 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA for the Capacity Attributes Seller failed to make available to Buyer. Payment of the RA Deficiency Amount shall be Seller's sole and exclusive liability for any failure to properly submit Supply Plans in accordance with Section 4.2 or otherwise make available any Resource Adequacy Benefits.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the difference, expressed in kW, of (A) RA Contract Quantity, and (B) the Delivered RA Quantity (such difference, the "**RA Shortfall**"), multiplied by [REDACTED]

██████████; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in accordance with Section 4.3.

4.7 **Gas Supply.**

(a) **Gas Utility Connection.** Seller will, at its sole cost and expense, maintain the interconnection of the Thermal Resource and gas meter to the Gas Distribution Utility.

(b) **Supply of Gas.**

(i) Seller will cause the Scheduling Coordinator to procure a sufficient quantity of natural gas for the continuous operation of the Thermal Resource consistent with the dispatch schedule for the Thermal Resource and to deliver such natural gas to the Gas Utility Receipt Point; and

(ii) Buyer will pay all costs associated with the procurement and delivery of natural gas to the Facility, excluding any costs, charges or penalties incurred due to the Seller's failure to perform its actions under this Agreement or Seller's failure to comply with the tariffs, agreements or other requirements of the Gas Distribution Utility.

4.8 **Charging Energy Management.**

(a) **Generally.** Buyer shall be solely responsible, at its sole cost, for procuring Charging Energy. Buyer shall be solely responsible, at its sole cost, for arranging transmission and wheeling required to deliver Charging Energy to the Delivery Point for the BESS Resource and to accept Discharging Energy at the Delivery Point for the BESS Resource. Except as expressly set forth in this Agreement, including Sections 4.8(c) and (e) and Section 4.11(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the BESS Resource. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) **Charging Notices.** The BESS Resource will have the capability to be charged seven (7) days per week and twenty-four (24) hours per day (including holidays), through Charging Notices sent electronically, provided, that the right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement including the Operating Procedures; provided, however, that the sole and exclusive remedy for any failure of the BESS Resource to be available is the Availability Adjustment Factor. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice). Notwithstanding the foregoing, Buyer shall be solely responsible for causing sufficient Charging Notices to be issued to (i) support any Discharging Notices and (ii) ensure the eligibility of the Resource Adequacy Benefits for purchase and sale under the CAISO market rules, and (iii) otherwise participating in any CAISO markets.

(c) No Unauthorized Charging. Seller shall not charge the BESS Resource during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO. If, during the Contract Term, Seller (i) charges the BESS Resource to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the BESS Resource in violation of the first sentence of this Section 4.8(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the BESS Resource, (y) Buyer shall not be required to pay for such Energy, and (z) Buyer shall be entitled to discharge such Energy and entitled to the Product associated with discharging such Energy.

(d) Discharging Notices. Buyer will have the right to discharge the BESS Resource seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures provided, however, that the sole and exclusive remedy for any failure of the BESS Resource to be available is the Availability Adjustment Factor. Seller shall comply with all Discharging Notices, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the BESS Resource during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO. If, during the Delivery Term, Seller (i) discharges the BESS Resource other than as provided for in the Discharging Notice or (ii) discharges the BESS Resource in violation of the first sentence of this Section 4.8(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the BESS Resource, (y) Buyer shall not be required to pay for the Charging Energy that was discharged, and (z) Buyer shall be entitled to the Product associated with such discharge.

(f) Scheduling Charging Energy and Discharging Energy. Seller (or Seller's SC) shall schedule Charging Energy and Discharging Energy in accordance with the Charging Notices and Discharging Notices, subject to the requirements of this Agreement. In the event that Seller (or Seller's SC) fails to schedule the Charging Energy or Discharging Energy in accordance with Buyer's instructions and the requirements of this Agreement, the payment amounts owed to Buyer by Seller shall equal the net revenue Buyer would have received had Seller (or Seller's SC) properly Scheduled the Charging Energy or Discharging Energy, as applicable. Payment of such amount shall be Seller's sole and exclusive liability for any failure to schedule the Charging Energy or Discharging Energy, except as provided in Exhibit N.

(g) Pre-Commercial Operation Date Period; Coordination Regarding Commissioning and Storage Capacity Tests. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the BESS Resource. Seller is responsible to procure, at its own cost, any Energy required for commissioning purposes and to arrange to discharge such Energy into the grid. Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the BESS Resource testing for periods prior to the Commercial Operation Date. Both prior to and after the Commercial Operation Date, (i) Buyer

shall reasonably coordinate and cooperate with Seller with respect to BESS Resource commissioning and Storage Capacity Tests, and (ii) Seller shall reasonably coordinate and cooperate with Buyer with respect to BESS Resource commissioning and Storage Capacity Tests so as to minimize direct and opportunity costs to the Buyer associated with such activities.

4.9 **Reduction in Deliveries.**

(a) **Facility Maintenance.** Seller will deliver to Buyer the expected schedule for performing maintenance on the Facility in accordance with Exhibit I.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(d) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 7.2.

4.10 **Storage Availability.**

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability during each month of no less than the Guaranteed Storage Availability, which Monthly Storage Availability shall be calculated in accordance with Exhibit E.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Product shall be calculated by reference to the Availability Adjustment Factor (as determined in accordance with Exhibit E).

4.11 **Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit F. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit F.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on Site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller, Seller shall (i) not be entitled to the payment for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, Buyer shall (x) procure the associated Charging Energy, (y) be liable for all CAISO costs and charges for the associated Charging Energy, and (z) be entitled to any CAISO revenues associated with the associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any

Storage Capacity Test except as reasonably requested by Seller or Buyer to implement the applicable test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit F. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to a Storage Capacity Test (not to exceed the initial Energy Contract Quantity set forth on the Cover Sheet) shall become the new Energy Contract Quantity at the beginning of the day following the completion of the test for all purposes under this Agreement.

4.12 **Efficiency Guaranty**. On a monthly basis, if the Efficiency Rate of the BESS Resource exceeds the Guaranteed Efficiency Rate, Seller shall reimburse Buyer for the incremental cost of purchasing Charging Energy calculated in accordance with Exhibit C.

4.13 **Heat Rate Guaranty**. On a monthly basis, if the Heat Rate of the Thermal Resource exceeds the Guaranteed Heat Rate, Seller shall reimburse Buyer for the incremental cost of purchasing natural gas for the Thermal Resource calculated in accordance with Exhibit C.

4.14 **Cycle Limits**. Buyer may not exceed the Daily Start Limit or Annual Run Hour Limit of the Thermal Resource or the Annual Cycle Limit of the BESS Resource. In the event that Buyer exceeds the preceding limits or its usage is below the preceding limits, Buyer shall, if and to the extent applicable, be assessed additional fees or credits in accordance with Exhibit J.

4.15 **Interconnection Capacity**. Throughout the Delivery Term, Seller shall have and maintain interconnection capacity available or allocable (a) to the Facility that is no less than the Baseline Net Qualifying Capacity, (b) to the BESS Resource that is no less than the Energy Contract Quantity, and (iii) to the Incremental BESS Resource that is no less than the Incremental Capacity. Seller shall be responsible for all costs of interconnecting the Facility and the Incremental BESS Resource to the Transmission System. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or the Gas Distribution Utility or under this Agreement resulting from Seller's breach of this Section 4.15. Buyer shall use commercially reasonable efforts to mitigate the damages from such breach.

4.16 **Title and Risk of Loss**. As between Buyer and Seller, Buyer shall have risk of loss for all natural gas prior to delivery to gas meter for the Thermal Resource, and Seller shall have risk of loss thereafter. Risk of loss related to the Charging Energy will pass and transfer from the Buyer to the Seller when the Charging Energy is delivered to the Delivery Point. Title and risk of loss related to the Facility Energy will pass and transfer from the Seller to the Buyer when Facility Energy is delivered to the Delivery Point.

ARTICLE 5 RESERVED CAPACITY

5.1 **Retained Right and Resale of Reserved Capacity**. Buyer acknowledges and agrees that the Product and Buyer's rights to any Capacity Attributes from the thirty-two (32) MW BESS Resource do not include the Capacity Attributes associated with sixteen (16) MW of the BESS Resource that are incremental for purposes of CPUC Decision 21-06-035 (the "**Reserved**

Capacity”). Seller may re-sell all or part of the Reserved Capacity; provided that any such re-sale shall not limit Seller’s obligations to Buyer under this Agreement and shall not increase Buyer’s obligations hereunder.

ARTICLE 6 TAXES

6.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

6.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 7 MAINTENANCE OF THE FACILITY

7.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Industry Practice relating to the operation and maintenance of the Facility, the generation and sale of Product.

7.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer’s emergency contact identified on Exhibit G of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy, Dispatching Energy or Discharging Energy to Buyer.

7.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Energy Contract Quantity.

ARTICLE 8 METERING

8.1 **Metering.** Seller shall obtain and maintain a CAISO Resource ID for each of the BESS Resource and the Thermal Resource. At Seller's expense, Seller shall install and maintain all necessary Energy Meters and telemetry required by the CAISO to deliver the Product. At Seller's expense, Seller shall install and maintain the Gas Meter as required for the Thermal Resource to receive natural gas service from the Gas Distribution Utility.

8.2 **Meter Verification.** If Seller has reason to believe there may be an Energy Meter or a Gas Meter malfunction, or upon Buyer's reasonable request, Seller shall test the Energy Meter or the Gas Meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. Meter accuracy shall be determined based on CAISO or Gas Distribution Utility standards, as applicable. If a meter is inaccurate it shall be promptly repaired or replaced at Seller's expense. If the meter test was performed by Buyer's request and the meter(s) provided to be accurate, Buyer shall reimburse Seller for the costs and expenses associated with the test.

8.3 **Meter Adjustments.** If a meter provided to be inaccurate, the procedures used by the CAISO or the Gas Distribution Utility, as applicable, shall be used to adjust payments due hereunder. If no such procedures are applicable, Seller shall, acting reasonably and in good faith, determine when the inaccuracy first became effective and calculate the resulting adjustments. If Seller cannot reasonably determine when the inaccuracy first occurred, it will be assumed to have occurred halfway between the previous test and the current test (not to exceed 6 months).

ARTICLE 9 INVOICING AND PAYMENT; CREDIT

9.1 **Contract Price.** The contract price (the "**Contract Price**") shall be calculated monthly, in arrears, as follows:

- (a) The RA Reservation Payment, plus
- (b) The Energy Reservation Payment, plus
- (c) The product of (i) the Variable O&M and (ii) the Dispatchable Energy

delivered in the applicable month; plus

(d) The costs incurred by Seller from the Gas Distribution Utility for receipt of any natural gas associated with Dispatchable Energy excluding any costs, charges or penalties incurred due to the Seller's failure to perform its actions under this Agreement or Seller's failure to comply with the tariffs, agreements or other requirements of the Gas Distribution Utility.

9.2 **Statements and Invoicing.** Seller shall deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including the amount of Charging Energy, Discharging Energy and Dispatchable Energy delivered to Buyer (if any), the RA Reservation Payment, the Energy Reservation Payment and the total Contract Price; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably acceptable to Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. The invoice shall be delivered by electronic mail in accordance with Exhibit G.

9.3 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit G, which may be updated by Seller by Notice hereunder; provided, however, that changes to invoice, payment, wire transfer and other banking information in the Agreement must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to the Agreement. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.4 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

9.5 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 9.6, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) there have been meter inaccuracies;

provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.3, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twelve (12) months from the date of the invoice.

9.6 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. 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 five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 9.5. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.6 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

9.7 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including, without limitation, liquidated damage payments under Exhibit B, CAISO Costs and Revenues calculated pursuant to Exhibit N, interest, payments, and credits shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

9.8 **Payment Security.**

(a) **Seller's Security.**

(i) **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (x) fails to maintain the minimum Credit Rating

specified in the definition of Letter of Credit, (y) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (z) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

(ii) Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

(iii) First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest in, and lien on (and right to net against), and assignment of the Development Security and Performance Security to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Section 9.8(a) and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's security interest granted under this Section 9.8(a)(iii) in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Reserved.

9.9 Use of Financial Security. Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Financial Security provided by Seller, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 9.9):

(a) Exercise any of its rights and remedies with respect to the Financial Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Financial Security; and

(c) Liquidate the applicable Financial Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under this Agreement and Seller shall remain liable for any amounts owing to Buyer after such application, subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 10 NOTICES

10.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit G or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

10.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission (or, in the case of electronic mail, if no notice of delivery failure is received). Notices of claimed breach of this Agreement or an Event of Default must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

ARTICLE 11 FORCE MAJEURE

11.1 **Definition.**

(a) **"Force Majeure Event"** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure

Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; epidemic; pandemic; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy storage capacity at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (v) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

11.2 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. In addition, if a Force Majeure Event causes the Facility to be materially damaged such that returning the Facility to the full operational status that existing prior to the Force Majeure Event is reasonably expected to take more than twelve (12) months, Seller may terminate this Agreement upon Notice to Buyer. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b). Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 12.112.1(b)(i) or (ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 12.2.

11.3 Notice for Force Majeure. Within two (2) Business Days of the Party becoming aware of that a Force Majeure Event will impact the Party’s performance under this Agreement, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks thereafter the claiming Party shall provide the other Party with Notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely Notice shall not constitute a waiver of the Force Majeure Event, but the relief granted shall be based on the date Notice is provided rather than the date of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that each day of the

claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

ARTICLE 12 DEFAULTS; REMEDIES; TERMINATION

12.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 12.1) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 15.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) the failure by Seller to achieve Commercial Operation by [REDACTED];

(ii) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(iii) except to the extent excused by an Excused Event, if Seller fails to maintain an average Storage Capacity equal [REDACTED] or

(iv) failure by Seller to provide and maintain Financial Security pursuant to Section 9.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish amounts in accordance with this Agreement.

12.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 12.1(b)(i)), or (ii) the Termination Payment calculated in accordance with Section 12.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any termination of this Agreement and the Event of Default related thereto.

12.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for the Terminated Transaction owed pursuant to Section 12.2(b)(ii) shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement

Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 12.2 or this Section 12.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 12.2 or this Section 12.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

12.4 **Notice of Payment of Termination Payment.** As soon as practicable after termination of this Agreement, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

12.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

12.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 12 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 13 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

13.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

13.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND

MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES; AUTHORITY

14.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The

execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Seller has, or will have prior to the Delivery Term, all necessary Governmental Approvals to perform its obligations hereunder.

14.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority, duly organized, validly existing and in good standing under the laws of California.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer has, or will have prior to the Delivery Term, all necessary Governmental Approvals to perform its obligations hereunder.

14.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

ARTICLE 15 ASSIGNMENT

15.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void.

15.2 **Collateral Assignment.** Subject to the provisions of this Section 15.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Financing Party to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Financing Party in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such Notice shall be provided to Financing Party at the time such Notice is provided to Seller and the additional cure period of Financing Party agreed to in the Collateral Assignment Agreement shall not commence until Financing Party has received Notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Financing Party to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Financing Party to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented);

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan; and

(v) Seller or Financing Party must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Financing Party will have the right to cure an Event of Default on behalf of Seller, only if Financing Party sends a Notice to Buyer before the later of (i) the expiration of any cure period, and (ii) fifteen (15) Business Days after Financing Party's receipt of Notice of such Event of Default from Buyer, indicating Financing Party's intention to cure. Financing Party must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of one hundred twenty (120) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Financing Party to cure any Event of Default);

(d) Financing Party will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Financing Party will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Financing Party, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Financing Party or its designee must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Financing Party as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Financing Party that Buyer will require that Financing Party cure (or cause to be cured) any Event of Default existing as of the possession date which are capable of being cured in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Financing Party at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or

(ii) Not assume this Agreement;

(g) If Financing Party elects to sell or transfer the Facility (after Financing Party directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Financing Party (for example, a foreclosure sale where a third party is the

buyer, or otherwise), then Financing Party shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Financing Party's cure of any Events of Defaults under the Agreement in accordance with Section 15.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Financing Party shall have the right to elect within one hundred eighty (180) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Financing Party or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Financing Party must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Financing Party, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall (i) meet the definition of Permitted Transferee and (ii) be an entity that Buyer is permitted to contract with under applicable Law.

(i) In addition, Buyer agrees to otherwise cooperate in a timely manner with the due diligence efforts of any such Lender and to deliver reasonable and customary estoppel certificates to the extent requested or required by a Lender in connection with a financing or tax equity financing.

15.3 Buyer Limited Assignment. Buyer shall have the right to make a limited assignment in connection with a municipal prepayment transaction to an entity ("**Limited Assignee**") that has, or provides a parent guaranty in form and substance reasonably acceptable to Seller from an entity with, an Investment Grade Credit Rating, of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement. Buyer shall pay Seller for any payments not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein. Subject to the foregoing, Buyer may make such assignment upon not less than thirty (30) days' advance Notice by delivering to Seller a written request for Seller's consent to such assignment, which request must include a proposed assignment agreement in form and substance reasonably acceptable to Seller. 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.

ARTICLE 16

DISPUTE RESOLUTION

16.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Santa Clara, California.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a 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 the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, 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 Agreement.

16.3 **Arbitration.** In the event of a dispute under Section 20.13, or upon the agreement of both Parties, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“**JAMS**”) pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of Buyer and Seller shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the “**chairperson**”) within thirty (30) days of the commencement of the arbitration. If either Seller or Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Seller and Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation

and expenses of the three arbitrators and all other expenses charged by JAMS shall be equally split by Buyer and Seller. Notwithstanding the foregoing provisions of this Section 16.3, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

ARTICLE 17 INDEMNIFICATION

17.1 **Indemnity.** Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (the “**Indemnified Party**”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees (collectively, “**Indemnifiable Losses**”) for (a) personal injury or death to Persons, (b) damage to the property of any third party, (c) any fines or penalties imposed by any Governmental Authority, and (d) the loss or failure to deliver Resource Adequacy Benefits or other Capacity Attributes due to (i) Buyer’s failure to meet its obligations set forth in Section 4.8, or (ii) arising out of or relating to or in any way connected with the Indemnifying Party’s or its Affiliates’ breach of this Agreement, negligence or willful misconduct. Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages to the extent resulting from its negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly provide Notice to the Indemnifying Party in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 17.1 (“**Claim**”). The Notice is referred to as a “**Notice of Claim**.” A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnified Party regarding the Indemnifiable Loss.

17.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in Section 17.2 will not affect the rights or obligations of the Indemnified Party except and only to the extent that, as a result of such failure, the Indemnifying Party was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure.

17.4 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 17.2, the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the

Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

17.5 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 18 INSURANCE

18.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED] endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the BESS Resource prior to the Commercial Operation Date, construction all-risk form property insurance covering the BESS Resource during such construction periods, and naming the Seller (and Financing Party if any) as the loss payee.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the BESS Resource to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of [REDACTED] per occurrence and in the aggregate, naming the Seller (and Financing Party if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(g).

(h) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 19 CONFIDENTIAL INFORMATION

19.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction

against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt Notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing Notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920 et seq.).

19.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

19.4 **Disclosure to Financing Parties, Etc..** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Financing Party or any of its Affiliates, and Seller’s actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms). Seller shall provide Notice to Buyer of any disclosure of Confidential Information pursuant to this Section 19.4, including the identity of the party receiving such Confidential Information.

19.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party’s consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 20 MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

20.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Financing Party or Indemnified Party.

20.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

20.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **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.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Agreement.

20.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

20.12 **Further Assurances**. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which

are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

20.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that the other Party enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith, provided, however that Seller shall have no obligation to agree to any amendment that results in an unreimbursed reduction of forecast revenue Seller expects to generate under this Agreement. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 16.3. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

MRP PACIFICA MARKETING LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name	Hanford
County	Kings County, CA
Site APNs	To be determined
Facility Type	Natural gas-fired plant and battery energy storage system (BESS)
Participating Transmission Owner	
Thermal Resource	
Description	2 X LM6000 simple cycle gas turbine engines
Generating Capacity (MW)	99.4
Heat Rate	10.2 MMBtu/MWh
Resource ID	
BESS Resource	
Type	Lithium Ion Battery Energy Storage System
Operating Characteristics	
Operating Procedures	See <u>Exhibit H</u>
Maximum Charging Capacity (MWh)	149.3
Maximum Discharging Capacity (MWh)	131.4
Maximum Stored Energy Level (MWh)	131.4
Incremental Capacity (MW)	The BESS Resource has 32 MW (4-hour discharge) of Incremental Capacity of which 16 MW is allocated to Buyer under this Agreement.
Resource ID	To be determined by CAISO

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION


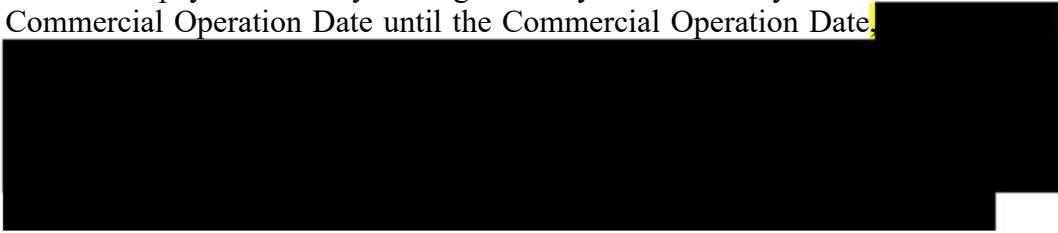
1. **Thermal Resource.** The Thermal Resource is operational.
2. **BESS Resource.**
 - a. **“Construction Start”** will occur following Seller’s execution of one or more engineering, procurement, and construction (EPC) contracts related to the BESS Resource and issuance of a full Notice to proceed with the construction of the BESS Resource under such EPC contracts that includes authorization of mobilization to the Site by Seller and/or its designees and authorization of the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit K hereto, and the date certified therein shall be the **“Construction Start Date.”** The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
 - b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay.

[REDACTED]

[REDACTED] Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the BESS Resource. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. [REDACTED]

[REDACTED] The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 12.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 12.1(b)(i) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 12.2.
3. **Commercial Operation of the BESS Resource.** **“Commercial Operation”** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit L (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Commercial Operation has been achieved. Subject to Buyer’s confirmation in Section 3(iii) of this Exhibit B, the **“Commercial Operation Date”** shall be the later of (x) the Expected

Commercial Operation Date or (y) the date in the COD Certificate on which Seller confirmed to Buyer that Commercial Operation was achieved.

- a. Seller shall cause Commercial Operation for the BESS Resource to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. If Seller achieves Commercial Operation for the BESS Resource within thirty (30) days after the Guaranteed Commercial Operation Date 
 - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended pursuant to the Development Cure Period, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. 
 - d. If Commercial Operation is achieved during a month for which Seller has paid COD Delay Damages, Buyer shall repay to Seller the amount of COD Delay Damages paid to Buyer that are not owed by Seller for such month. Seller may include such amounts owed by Buyer in its invoices to Buyer hereunder.
 - e. The Parties agree that Buyer’s receipt of COD Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 12.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 12.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to Notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the

“Development Cure Period”) for the duration of any and all delays arising out of the following circumstances:

- a. a Force Majeure Event;
- b. Interconnection Delays; and
- c. Event of Default of Buyer.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period, other than any delays due to (c), shall not exceed [REDACTED], for any reason, including a Force Majeure Event. For clarity, the permitted extensions under the Development Cure Period extend each of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date simultaneously. No extension shall be given under the Development Cure Period if, and to the extent that, the delay was due to Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation for delays demonstrating to Buyer’s reasonable satisfaction that such delay did not result from Seller’s failure to take commercially reasonable actions.

- 5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G hereto specifying the new Installed Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to [REDACTED] for each MW that the Storage Contract Capacity exceeds the Installed Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement, including the Storage Contract Capacity table in the Cover Sheet, shall be adjusted accordingly.
- 6. **Commercial Operation Conditions:** Commercial Operation of the BESS Resource shall occur once the following conditions are satisfied:
 - a. The BESS Resource is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
 - b. Seller has installed equipment for the BESS Resource.
 - c. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.

- d. Seller has demonstrated functionality of the BESS Resource's communication systems and automatic generation control (AGC) interface to operate the BESS Resource as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
- e. The BESS Resource is fully capable of charging, storing and discharging energy and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Protocols.
- f. Authorization was received from the CAISO and the Participating Transmission Owner to operate the BESS Resource is parallel with the Transmission System.
- g. The PTO has provided documentation supporting Commercial Operation.
- h. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

EXHIBIT C

HEAT RATE AND EFFICIENCY GUARANTY

Thermal Resource Heat Rate Guaranty

Heat Rate Testing: The heat rate (“**Heat Rate**”) of the Thermal Resource shall be determined by performing thermal performance testing generally in accordance with the American Society of Mechanical Engineers’ Standard PTC 22 and Prudent Industry Practice. The Heat Rate will be first tested no later than thirty (30) days prior to the System RA Start Date and thereafter, the Heat Rate will be tested annually upon Buyer’s request. [In addition, Buyer shall have the right to require a test or retest of the Heat Rate at any time upon no less than ten (10) Business Days prior written Notice to Seller if Buyer reasonably believes that the current Heat Rate has varied materially from the results of the most recent Heat Rate test.] All costs or revenues associated with any Heat Rate test shall be borne by, or accrue to, Buyer, as applicable.

Heat Rate Liquidated Damages: In the event the Heat Rate is lower than the Guaranteed Heat Rate, Seller will pay to Buyer, as liquidated damages and not a penalty, the sum of (a) Buyer’s average cost of purchasing additional natural gas during the period since the last Heat Rate Test to power the Thermal Resource as compared with the quantity that would have been purchased had the Heat Rate equaled the Guaranteed Heat Rate and (ii) the incremental costs associated with the distribution of such additional natural gas from the Gas Utility Receipt Point to the Thermal Resource during the period since the last Heat Rate Test. For each monthly period after any Heat Rate test demonstrating a Heat Rate lower than the Guaranteed Heat Rate, Heat Rate Liquidated Damages shall be calculated and paid on a monthly basis, and shall be reflected as a credit on the monthly invoice in accordance with Section 9.7.

BESS Resource Efficiency Guaranty

Efficiency Guaranty Testing:

The “**Efficiency**” of the BESS Resource shall be calculated as follows:

$$Efficiency = \frac{MWh_{delivered} + \text{Stored Energy}_{end}}{MWh_{received} + \text{Stored Energy}_{start}}$$

Where:

- (i) $MWh_{delivered}$ = all measured and recorded Discharge Energy delivered from the BESS Resource at the Metering Point for the Facility during the Measurement Period.
- (ii) $MWh_{received}$ = all measured and recorded Charging Energy received during charging of the BESS Resource at the Metering Point for the Facility during the Measurement Period.

- (iii) $\text{Stored Energy}_{\text{end}}$ = available electric energy in the BESS Resource at the end of the Measurement Period.
- (iv) $\text{Stored Energy}_{\text{start}}$ = available electric energy in the BESS Resource at the start of the Measurement Period.
- (v) “Measurement Period” means a calendar month.

Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate.

If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by

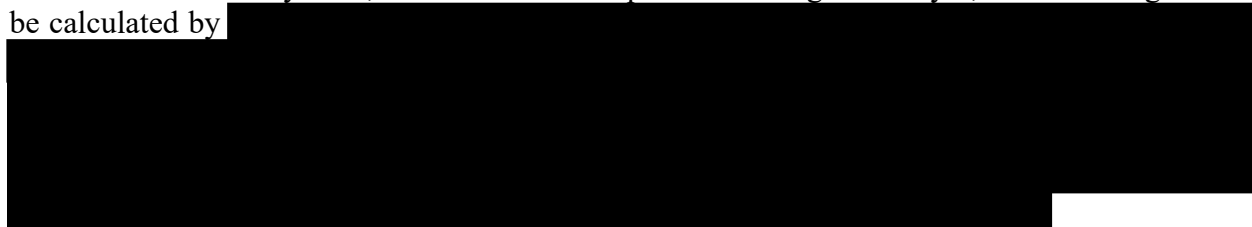


EXHIBIT D
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
Expiration Date:

Beneficiary:

[_____]
[_____]
Attn: [_____]

Ladies and Gentlemen:

By the order of [_____] ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of [_____] a [_____] ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Dispatchable Energy and Energy Storage Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with

the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately prior paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [____], Attn: [____], [Insert Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]
[Insert officer title]

Exhibit A

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [____], a [____], [Insert Address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [____], a [____] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Dispatchable Energy and Energy Storage Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Buyer Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of [____] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [____] by wire transfer in immediately available funds to the following account:

[Specify account information]

[_____]

Name and Title of Authorized Representative

Date _____

EXHIBIT E

STORAGE AVAILABILITY

1. Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{\text{Average Storage Capacity}}{\text{Storage Contract Capacity}}$$

where:

$$\text{Average Storage Capacity} = \frac{\sum \text{Hours Available Capacity}}{\text{Hours}}$$

Where:

Hours = All hours in the month

Available Capacity = for each hour of the month:

- (i) the capacity Seller reports to Buyer as being Available to be scheduled; and
- (ii) any capacity from the BESS resources that is Unavailable to be scheduled due to Force Majeure Events, System Emergencies, acts or omissions of Buyer or Planned Outages (collectively, “**Excused Events**”).

If the BESS Resource is Unavailable for less than a full hour, the Available Capacity shall be the average capacity that was Available during that hour.

If the BESS Resource or any component thereof was previously deemed Unavailable for an hour or part of an hour, and Seller provides a revised notice indicating the BESS Resource is Available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Product in the Day-Ahead Market (as defined in the CAISO Tariff), the BESS Resource will be deemed to be Available to the extent set forth in the revised notice.

If the BESS Resource or any component thereof was previously deemed Unavailable for an hour or part of an hour and Seller provides a revised notice indicating the BESS Resource is Available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the

Product in the Real-Time Market (as defined in the CAISO Tariff), the BESS Resource will be deemed to be Available to the extent set forth in the revised Notice.

2. Availability Adjustment Factor

The applicable “**Availability Adjustment Factor**” or “**AAF**” is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

[REDACTED]

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, then:

[REDACTED]

EXHIBIT F

STORAGE CAPACITY TESTS

The “**Storage Capacity Test**” shall be performed by Seller by maintaining Discharging Energy from the BESS Resource for one (1) hour and the “**Effective Discharge Capacity**” in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the one (1) hour test period, as measured at the Delivery Point for the BESS Resource, divided by one (1); provided, however, that the Effective Discharge Capacity cannot exceed the Storage Capacity set forth in Exhibit A (“**Capacity Limit**”).

Within the first quarter of each Contract Year, upon no less than five (5) Business Days’ prior notice to Buyer, Seller shall schedule and complete a Storage Capacity Test (the “**Annual Storage Capacity Test**”) In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon five (5) Days prior Notice to Seller if Buyer reasonably believes that the Effective Storage Capacity or the Effective Discharge Capacity has varied materially from the results of the most recent tests. Seller shall have the right to run up to three (3) retests of the Storage Capacity Test at any time upon five (5) days prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Practices). Except for establishing the Storage Capacity for purposes of achieving Commercial Operation, Seller may demonstrate the Effective Storage Capacity or the Effective Discharge Capacity by reference to operational data from a meter at the Delivery Point for the BESS Resource in lieu of conducting a Storage Capacity Test. For the avoidance of doubt, the Annual Storage Capacity Test may not result in an Effective Discharge Capacity greater than the Capacity Limit.

No later than five (5) Days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings from the Delivery Point for the BESS Resource and plant log sheets verifying the operating conditions and output of the Facility. The actual capacity determined pursuant to a Storage Capacity Test shall become the new Energy Contract Quantity at the beginning of the day following the completion of the test for all purposes under this Agreement.

EXHIBIT G

NOTICES

MRP Pacifica Marketing LLC	Silicon Valley Clean Energy Authority
All Notices: Street: City: Attn: Phone: Email:	All Notices: 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 Attn: Girish Balachandran, CEO and Monica Padilla, COO and Director of Power Resources Phone: (408) 721-5301 Email: girish@svcleanenergy.org and monica.padilla@svcleanenergy.org
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Phone: Email:	Invoices: Attn: Power Supply Group Phone: (408) 721-5301 Email: svceinvoices@svcleanenergy.org
Scheduling: Attn: Phone: Email:	Scheduling: Attn: ZGlobal Phone: (916) 221-4064 (Jamil Labban) and (916) 235-9193 (Nicole Ramos) Email: jlabban@zglobal.biz and nramos@zglobal.biz
Confirmations: Attn: Phone: Email:	Confirmations: Attn: Phone: Email:
Payments: Attn: Phone: Email:	Payments: Attn: Finance Group Phone: (408) 721-5301 Email: svceinvoices@svcleanenergy.org
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]
Credit and Collections: Attn: Phone: Email:	Credit and Collections: Attn: Finance Group Phone: (408) 721-5301 Email: svceinvoices@svcleanenergy.org

MRP Pacifica Marketing LLC	Silicon Valley Clean Energy Authority
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	With additional Notices of an Event of Default or Force Majeure Event to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com and to: Attn: Monica Padilla, Director of Power Resources Email: monica.padilla@svcleanenergy.org Attn: Amrit Singh, Chief Financial Officer/Director of Administrative Services Email: amrit.singh@svcleanenergy.org

EXHIBIT H

OPERATING PROCEDURES

The Thermal Resource shall be subject to the following technical operating restrictions:

	Description	Value	Notes
1.	Generating Capacity	MW	
2.	Daily Dispatch Limits		
3.	Start-up Ramp rate	MW/min	
4.	Interconnection Capacity Limit	[] MW	
5.	Ancillary Services	Regulation Up, Regulation Down, Voltage Support, Spinning Reserve, and Non-spinning Reserve.	

The BESS Resource shall be subject to the following technical operating restrictions:

	Description	Value	Notes
1.	Storage Capacity		
2.	Maximum Stored Energy Level		
4.	Maximum Charging Capacity		
5.	Minimum Charging Capacity		
6.	Maximum Discharging Capacity		
7.	Minimum Discharging Capacity		
8.	Maximum State of Charge (SOC) during Charging		
9.	Minimum State of Charge (SOC) during Discharging		
10.	Minimum Discharge Duration		
11.	Minimum Charging Duration		
12.	Daily Dispatch Limits		
13.	Start-up Ramp rate		

14.	Charging energy source		
15.	Interconnection Capacity Limit		
16.	Ancillary Services		

EXHIBIT I

MAINTENANCE INTERVALS

1.1 Maintenance Plans

- (a) Not later than ninety (90) days before the beginning of each Contract Year the Seller shall prepare and submit to the Buyer its proposed maintenance plan (a “**Maintenance Plan**”) for that Contract Year; provided that the Maintenance Plan for the first Contract Year shall be prepared and submitted by the Seller to the Buyer not later than sixty (60) days after the System RA Start Date. Seller shall periodically update the Maintenance Plan as necessary or appropriate during the applicable Contract Year. Outages identified in the Maintenance Plan, as it is updated from time to time, are referred to herein as “**Planned Outages**”.

1.2 Scheduled Outages

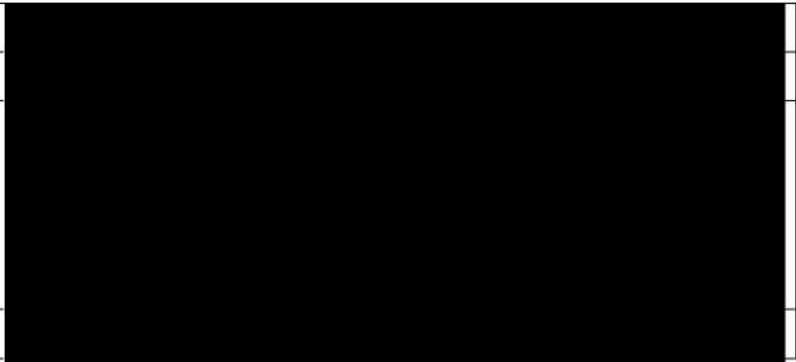
- (a) [REDACTED]
- (b) The Parties shall coordinate, acting reasonably and in good faith, to establish reasonable maintenance schedules for the various components of the Thermal Resource and the BESS Resource.
- (c) Seller and Buyer shall use reasonable commercial efforts to coordinate all forecasted maintenance to coincide with Buyer’s forecasted dispatch schedules to minimize any loss of revenue.

1.3 Major Overhauls During Peak Summer Months

- (a) Major Overhauls may not be scheduled during [REDACTED]
[REDACTED] As used herein “Major Overhaul” means a major overhaul or its equivalent as defined in the applicable original equipment manufacturer’s manual.

2. Reporting Scheduled Maintenance

- (a) Buyer must be informed, in advance, any time Seller is planning to perform scheduled maintenance on the Thermal Resource or the BESS Resource (each a “**Resource**” and together, the “**Resources**”). The advance notification requirements are as follows:

24 Hours		
7 Days		
3 Months		
Emergency		

2.1 Limited Generation Due to Maintenance

- (a) Maintenance may be performed while the applicable Resource is operating at reduced (limited) generation.
- (b) Maintenance may be performed on one Resource, or a unit thereof, while the other Resource, or unit(s) thereof, respectively, is operating.

2.2 Allowance for Planned Outages

- (a) 

2.3 Application of Maintenance Hours

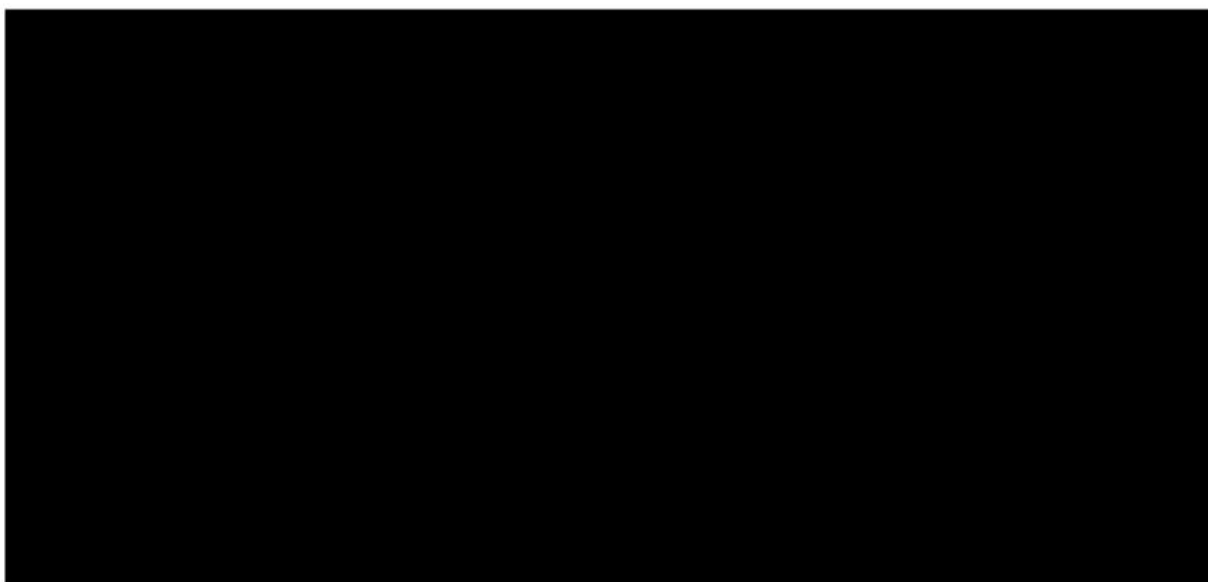


EXHIBIT J
[RESERVED]

EXHIBIT K

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by MRP Pacifica Marketing LLC (“**Seller**”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Dispatchable Energy and Energy Storage Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- 1 Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
- 2 the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- 3 the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

MRP Pacifica Marketing LLC

By: _____

Printed Name: _____

Title: _____

EXHIBIT L

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [**LICENSED PROFESSIONAL ENGINEER**] ("**Engineer**") to Silicon Valley Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Dispatchable Energy and Energy Storage Agreement dated _____ ("**Agreement**") by and between MRP Pacifica Marketing LLC ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [**DATE**], Engineer hereby certifies and represents to Buyer the following:

1. The BESS Resource is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the BESS Resource with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
4. Seller has demonstrated functionality of the BESS Resource's communication systems and automatic generation control (AGC) interface to operate the BESS Resource as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
5. The BESS Resource is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the BESS Resource was obtained from the Participating Transmission Owner.
7. The Transmission Provider has granted any necessary approvals for Commercial Operation.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.

EXECUTED by [**LICENSED PROFESSIONAL ENGINEER**]

this _____ day of _____, 20____.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Dispatchable Energy and Energy Storage Agreement dated _____ (“**Agreement**”) by and between MRP Pacifica Marketing LLC (“**Seller**”) and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for one hour to discharge electric energy of __ MW AC to the Delivery Point for the BESS Resource, in accordance with the testing procedures, requirements and protocols set forth in Section 4.7 and Exhibit F (the “**Installed Capacity**”).

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller as Scheduling Coordinator for the Facility. During the Delivery Term, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. As directed by Buyer, Seller (as the Facility's SC) shall submit Schedules and Supply Plans to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product, including on a day-ahead, hour-ahead, fifteen-minute market or real time basis.

(b) Notices. Seller (as the Facility's SC) shall use a web-based system through which Seller shall submit to CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide Buyer access to such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except during a Storage Capacity Test or as otherwise set forth below, Buyer shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, or other credits in respect of the Product Scheduled or delivered from the Facility, provided, that Seller shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) to the extent such CAISO costs are due to Seller's failure to schedule the Charging Energy or Discharging Energy in accordance with Buyer's instructions and the requirements of this Agreement. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. Buyer shall use reasonable efforts to avoid submitting bids that cause Seller to incur Non-Availability Charges. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Seller as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility. Subject to the foregoing, Seller shall pass through to Buyer all CAISO costs and revenues associated with the Facility, which shall be reflected as a credit on the monthly invoices provided to Buyer in accordance with the invoicing and payment provisions of Article 9, including the netting provisions of Section 9.7.

(d) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(e) Dispute Costs. Seller (as the Facility's SC) may be required to dispute CAISO settlements in respect of the Facility. If Buyer has directed Seller to dispute a CAISO settlement, Buyer agrees to pay Seller's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Buyer with respect to the Facility.

(f) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(g) NERC Reliability Standards. Seller (as Scheduling Coordinator) shall comply with NERC reliability standards.

Staff Report – Item 5

Item 5: Adopt Resolution to Update Design of SVCE's E-ELEC Generation Rate Discount

From: Girish Balachandran, CEO

Prepared by: Peter Mustacich, Energy Services Lead
Adam Selvin, Director of Energy Services and Community Relations

Date: 4/12/2023

RECOMMENDATION

Adopt Resolution 2023-07

1. Authorizing the CEO to amend SVCE's E-ELEC residential rate to establish generation rates 30% lower than PG&E's generation rates during Off-Peak summer and winter time-of-use periods, 10% higher than PG&E's generation rates during Peak summer and winter time-of-use periods, and with no deviation (0%) from PG&E's generation rates during Partial-Peak summer and winter time-of-use periods, to be implemented by May 1, 2023.

EXECUTIVE COMMITTEE RECOMMENDATION

At the March 24th Executive Committee meeting, multiple E-ELEC discount design options were presented, in accordance with staff's recommendation to the SVCE Board in December 2022 to reevaluate the approved electrification discount approach. The Executive Committee supported staff's recommendation to establish generation rates 30% lower than PG&E's generation rates during Off-Peak summer and winter time-of-use (TOU) periods, 10% higher than PG&E's generation rates during Peak summer and winter TOU periods, and with no deviation (0%) from PG&E's generation rates during Partial-Peak summer and winter TOU periods, in alignment with the "TOU Super" discount approach outlined below in this staff report. The Executive Committee also directed SVCE staff to evaluate including a phased enrollment approach whereby customers enrolled in the first phase would be offered a guaranteed discount duration, addressed in the "Additional Considerations" section of this report.

BACKGROUND

In December of 2022, the SVCE Board voted to adopt the E-ELEC ("Electric Home") residential rate mirroring PG&E's new rate established December 1, 2022. Qualification for the E-ELEC rate includes owning and operating a heat pump space or water heater, an energy storage system (ESS), and/or an electric vehicle (EV). The E-ELEC rate follows a time-of-use (TOU) structure similar to the EV-2A rate, which includes a daily schedule of Peak (4-9pm), Partial-Peak (3-4pm and 9pm-12am), and Off-Peak (12am-3pm) periods. The E-ELEC rate is currently only available to non-NEM customers, to be reevaluated by PG&E later this year as part of an E-ELEC Phase 2 rate release. Currently SVCE defers to PG&E for customer eligibility in the E-ELEC rate.

In December 2022, the SVCE Board also voted to approve \$9.5M for an electrification discount. This was intended to support decarbonization of existing homes by reducing potential on-bill impacts of electrifying major gas-fired appliances. As part of the December 2022 resolution, a 10% SVCE generation rate discount was implemented on the E-ELEC rate beginning January 1, 2023. Staff informed the Board at the time of adoption that they intended to revisit the E-ELEC discount structure in order to explore further alignment with SVCE's decarbonization objectives.

ANALYSIS & DISCUSSION

Budget Update

In December 2022 the SVCE Board approved \$9.5M for a multi-year electrification discount, which took effect on January 1, 2023 as a 10% discount to SVCE's generation component of the E-ELEC rate. While SVCE has not yet strongly promoted the E-ELEC rate or the associated electrification discount, enrollment is open to qualifying customers through PG&E's online rate tool or by calling PG&E customer service. Based on usage data from the beginning of 2023 through mid-February, 50 enrolled SVCE customers had earned roughly \$1,650 in E-ELEC generation discounts. At the time of writing this staff report, approximately 140 SVCE customers were enrolled in the E-ELEC rate. The approved \$9.5M discount funding is projected to accommodate linear growth of over 30,000 customers over a 5-year period, based on the current discount structure.

Staff is recommending the E-ELEC discount rate structure be updated to an alternate approach which is revenue neutral for the majority of SVCE residential customers but which promotes further decarbonization compared to the current E-ELEC discount structure.

Design of the E-ELEC Discount

SVCE staff has evaluated three alternate design options for the E-ELEC discount, which were compared to the discount structure currently in place. All three alternate designs are based around encouraging "beneficial electrification" through promoting more electricity consumption during Off-Peak TOU periods and reduced consumption during Peak periods. Structuring the discount to promote beneficial electrification aligns closely with SVCE's mission by further decreasing customer energy bills, reducing stress on the grid, and lowering emissions by better aligning consumer demand with the supply of renewable generation.

All three discount approaches are compared to the current discount structure ("Flat 10%") in the table below, which reflects the discount percentage relative to PG&E's generation rates for each TOU period (negative indicating a reduced SVCE generation rate, and positive reflecting an increased SVCE generation rate relative to PG&E's prices). Each option was designed to be approximately revenue neutral to SVCE for the average customer.

SVCE's E-ELEC Generation Discount Rates per TOU Period

		Flat 10%	TOU Std	TOU Plus	TOU Super
Winter	Off-Peak	-10%	-20%	-25%	-30%
	Partial-Peak	-10%	0%	0%	0%
	Peak	-10%	0%	+5%	+10%
Summer	Off-Peak	-10%	-20%	-25%	-30%
	Partial-Peak	-10%	0%	0%	0%
	Peak	-10%	0%	+5%	+10%

The "TOU Standard (Std)" discount was designed to shift the generation discount away from the Peak and Partial-Peak TOU periods to focus on further discounting the Off-Peak periods. "TOU Plus" and "TOU Super" take this concept a step further by increasing the Peak electricity cost relative to PG&E's generation rates in order to further decrease Off-Peak prices. It is important to note that a larger price difference between Peak

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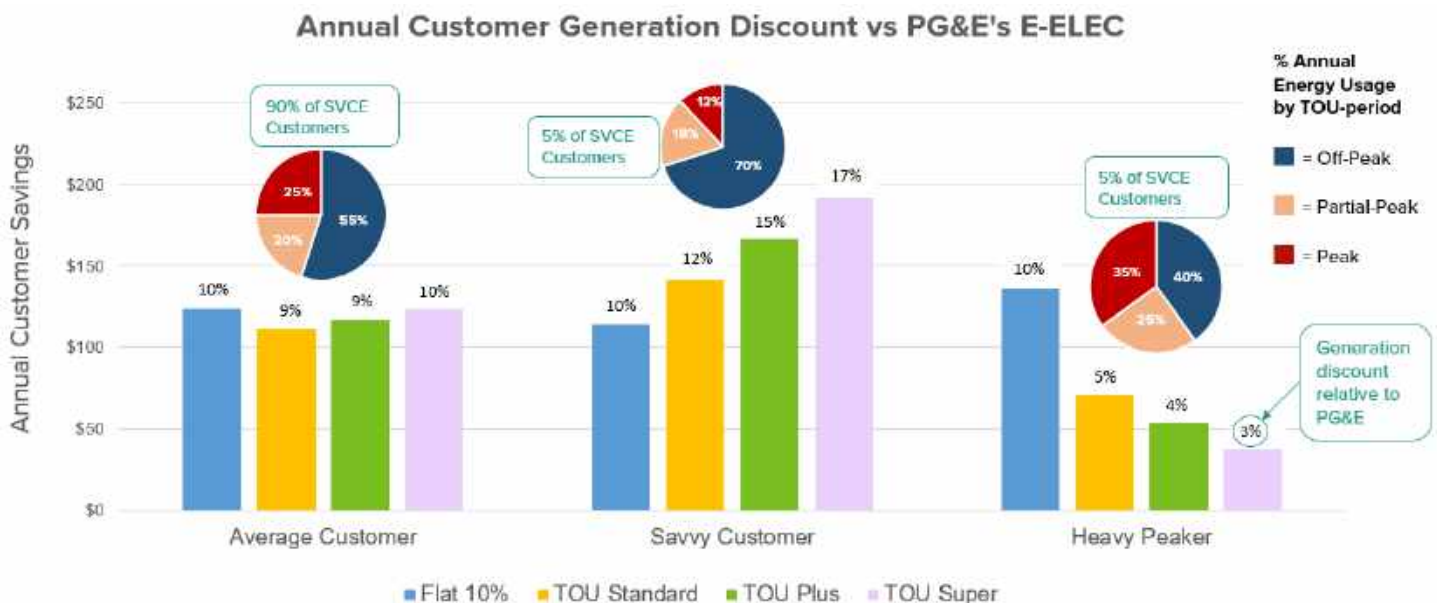
and Off-Peak rates supports beneficial electrification by more strongly incentivizing a shift in usage from Peak periods (when the grid is the most strained, is more reliant on natural gas peaker plants, and electricity is most expensive) to Off-Peak periods.

To evaluate potential impact of each discount design staff performed detailed analysis of customer electricity usage patterns and identified three main electricity usage profiles:

1. Average Customer – representing 90% of SVCE customers
2. Savvy Customer – representing the top 5% of SVCE customers in terms of maximizing Off-Peak electricity usage while minimizing Peak energy consumption throughout the year
3. Heavy Peaker – representing the 5% of SVCE customers using the most Peak electricity and the least Off-Peak electricity throughout the year

Each customer profile was modeled as using the same amount of electricity annually (~9,150 kWh), but to consume the energy at different times throughout the day. This annual usage represents an “all-electric” single-family home, meaning that the major end-use appliances have been electrified (space and water heating). The analysis did not account for cooking energy due to the small overall contribution to energy consumption. It also did not account for clothes dryers since 70% of single-family homes in Climate Zone 4 (SVCE territory) were reported to have electric clothes drying according to the 2019 Residential Appliance Saturation Survey (RASS) issued by the California Energy Commission.

Annual customer savings from SVCE’s generation discount was evaluated for each of the four discount design options, presented in the graph below for each of the three customer usage profiles. Each customer profile includes a pie-chart reflecting the percentage of annual electricity consumed per TOU period.



Even with increased Peak energy pricing in the “TOU Super” design, the Heavy Peaker profile is seen to benefit from a 3% discount, while the Average Customer receives the same 10% discount they would realize through today’s “Flat 10%” discount approach. However, by programming their appliances and implementing behavioral changes, the Average Customer could nearly double their current discount through the “TOU Super” discount design, promoting the type of beneficial electrification SVCE wants to encourage.

Based on this analysis, staff is recommending the Board update the E-ELEC discount design to reflect the “TOU Super” design by establishing generation rates 30% lower than PG&E’s generation rates during Off-Peak summer and winter TOU periods, 10% higher than PG&E’s generation rates during Peak summer and winter

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TOU periods, and with no deviation (0%) from PG&E's generation rates during Partial-Peak summer and winter TOU periods.

Additional Considerations

Staff evaluated the importance of incorporating a bill protection component in the "TOU Super" discount design in order to ensure customers' electricity costs wouldn't exceed the amount they would pay through PG&E's E-ELEC generation rates. Based on analysis of 2022 customer usage data, staff determined that only 8 out of nearly 240,000 residential customer accounts would see increased costs on "TOU Super". Therefore, it was determined that the cost and complexities of implementing bill protection are not warranted and that staff proposed instead to manually run monthly reporting screening for customers who might be at risk of incurring increased generation costs relative to PG&E.

Additionally, staff has evaluated the Executive Committee's recommendation to include a discount "time guarantee" for customers enrolling in E-ELEC in order to provide increased financial confidence when investing in electric appliances. Based on the Executive Committee's feedback, staff proposes the updated E-ELEC discount design include a phased approach, whereby the first 1,000 customers to enroll in E-ELEC are guaranteed the discount is in effect until at least January 1, 2027. Once Phase 1 is fully subscribed, SVCE staff will revisit the discount guarantee. Updates at that time could include revising the guarantee for a certain number of customers enrolled under Phase 2, removing the time guarantee altogether, or other alterations based on observations and data collected during Phase 1.

Planned Timing and Approach for the E-ELEC Discount Design Update

If this recommendation is approved by the Board, the SVCE rate table for E-ELEC will be updated to reflect the revised generation rates. Updated generation rates will be provided for implementation in SVCE's billing system, with a target start date by May 1, 2023.

STRATEGIC PLAN

Rate setting is directly supported by SVCE Strategic Plan Goal 8 – "Enact and maintain competitive service offerings for SVCE customers that deliver measurable economic and environmental benefits" and the accompanying measure, "Establish new rate program(s) to promote electrification, and matching of clean energy supply and demand."

ALTERNATIVE

As presented to the Executive Committee in March, staff have prepared the following table of E-ELEC discount design options (compared with PG&E's generation rates for comparison), with staff recommending the "TOU Super" design.

		PG&E Gen	Flat 10%	Discount	TOU Std	Discount	TOU Plus	Discount	TOU Super	Discount
Winter	Off-Peak	\$0.09928	\$0.08935	-10%	\$0.07942	-20%	\$0.07446	-25%	\$0.06950	-30%
	Partial-Peak	\$0.11263	\$0.10137	-10%	\$0.11263	0%	\$0.11263	0%	\$0.11263	0%
	Peak	\$0.13260	\$0.11934	-10%	\$0.13260	0%	\$0.13923	+5%	\$0.14586	+10%
Summer	Off-Peak	\$0.15052	\$0.13547	-10%	\$0.12041	-20%	\$0.11289	-25%	\$0.10536	-30%
	Partial-Peak	\$0.19562	\$0.17606	-10%	\$0.19562	0%	\$0.19562	0%	\$0.19562	0%
	Peak	\$0.29473	\$0.26526	-10%	\$0.29473	0%	\$0.30946	+5%	\$0.32420	+10%

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Both the "TOU Standard (Std)" and "TOU Plus" provide alternative options. Not adopting the proposed resolution would maintain the "Flat 10%" discount currently in place.

FISCAL IMPACT

Altering the E-ELEC discount design does not impact the approved \$9.5M funding for the electrification discount. The approved funding would likely be spent in a slightly accelerated manner through adoption of the "TOU Super" design, as larger customer discounts would be encouraged through behavioral modification. It is anticipated the "TOU Super" design would support linear adoption of over 20,000 customers across a 5-year period.

ATTACHMENT

1. Resolution 2023-07, Approving Design Update to the E-ELEC Rate Discount

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2023-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING DESIGN UPDATE TO THE E-ELEC RATE DISCOUNT

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, at the June 8, 2016 Board of Directors Meeting, the Board adopted the policy that the Authority’s customer generation rates for the default service will be 1% lower than Pacific Gas & Electric’s generation rates in place as of January 2017; and the policy allows reexamination of the rates, provided significant deviations in market prices or other extraordinary circumstances mandate an adjustment to the rates; and

WHEREAS, on December 14, 2022, the Board of Directors adopted Resolution No. 2022-38 approving establishing an E-ELEC (“Electric Home”) residential rate to correspond with PG&E’s new rate; and

WHEREAS, on December 14, 2022, the Board of Directors adopted Resolution No. 2022-39 approving \$9.5M for an electrification discount, to be commenced January 1, 2023 as a 10% discount to the E-ELEC residential rate, but which staff would reevaluate in 2023; and

WHEREAS, in April 2023, in order to better align the electrification discount with SVCE’s decarbonization objectives, the Board of Director’s desires to grant the Chief Executive Officer the authority to update the E-ELEC discount structure to reflect generation rates 30% lower than PG&E’s generation rates during Off-Peak summer and winter time-of-use periods, 10% higher than PG&E’s generation rates during Peak summer and winter time-of-use periods, and with no deviation (0%) from PG&E’s generation rates during Partial-Peak summer and winter time-of-use periods, to be made effective by May 1, 2023.

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 amend the Authority’s January 2023 E-ELEC generation rate discount of 10% adopted by Resolution No. 2022-39, to establish generation rates 30% lower than PG&E’s generation rates during Off-Peak summer and winter time-of-use periods, 10% higher than PG&E’s generation rates during Peak summer and winter time-of-use periods, and with no deviation (0%) from PG&E’s generation rates during Partial-1

Peak summer and winter time-of-use periods.

Section 2. The Authority's electric generation rates, as adjusted by the Chief Executive Officer pursuant to Section 1 above, shall become effective by May 1, 2023.

The Authority's adjusted E-ELEC electric generation rates shall be set forth in an updated 2023 Electric Generation Rates Schedule. The Chief Executive Officer shall provide a copy of the updated 2023 Electric Generation Rates Schedule to the Board of Directors at its first meeting after the E-ELEC SVCE electric generation rates are updated.

PASSED AND ADOPTED this 12th day of April 2023, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Scozzola				
City of Cupertino	Director Mohan				
City of Gilroy	Director Hilton				
City of Los Altos	Director Meadows				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Mekechuk				
City of Morgan Hill	Alternate Director Carothers				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Alternate Director Srinivasan				

Chair

ATTEST:

Andrea Pizano, Board Secretary

Silicon Valley Clean Energy Board of Directors Meeting

April 12, 2023

Appendix A

Power Resource Contracts Executed by CEO

CONFIRMATION

This confirmation agreement (“Confirmation”) confirms the Transaction between **TransAlta Energy Marketing (U.S.) Inc.** (“Seller”) and **Silicon Valley Clean Energy Authority** (“Purchaser”), each individually a “Party” and together the “Parties,” dated as of February 24, 2023 (“Effective Date”) regarding the sale and purchase of electric capacity and/or electric energy under the terms and conditions set forth below.

Transaction Number:	1174474 (Q2-23)
Purchaser:	Silicon Valley Clean Energy Authority
Seller:	TransAlta Energy Marketing (U.S.) Inc.
Trade Date:	February 24, 2023
Type of Transaction:	Inter-SC Trade
Term and Delivery Period:	
Contract Quantity:	
Contract Volume:	
Contract Price:	
Delivery Point:	

Transaction Number:	1174474 (Q3-23)
Purchaser:	Silicon Valley Clean Energy Authority
Seller:	TransAlta Energy Marketing (U.S.) Inc.
Trade Date:	February 24, 2023
Type of Transaction:	Inter-SC Trade
Term and Delivery Period:	
Contract Quantity:	
Contract Volume:	
Contract Price:	
Delivery Point:	

Transaction Number:	1174474 (Q4-23)
Purchaser:	Silicon Valley Clean Energy Authority
Seller:	TransAlta Energy Marketing (U.S.) Inc.
Trade Date:	February 24, 2023
Type of Transaction:	Inter-SC Trade
Term and Delivery Period:	
Contract Quantity:	
Contract Volume:	
Contract Price:	
Delivery Point:	

Transaction Number:	1174474 (2024)
Purchaser:	Silicon Valley Clean Energy Authority
Seller:	TransAlta Energy Marketing (U.S.) Inc.
Trade Date:	February 24, 2023
Type of Transaction:	Inter-SC Trade
Term and Delivery Period:	
Contract Quantity:	
Contract Volume:	
Contract Price:	
Delivery Point:	

Transaction Number:	1174474 (2025)
Purchaser:	Silicon Valley Clean Energy Authority
Seller:	TransAlta Energy Marketing (U.S.) Inc.
Trade Date:	February 24, 2023
Type of Transaction:	Inter-SC Trade
Term and Delivery Period:	
Contract Quantity:	
Contract Volume:	
Contract Price:	
Delivery Point:	

Governing Terms: This Transaction is governed by the terms and conditions of the EEI Master Agreement dated July 24, 2017, as amended August 15, 2019, along with any schedules and amendments thereto (collectively, the “Master Agreement”), and is subject to all the terms and provisions of such 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.

Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty 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.


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 written agreement executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a written agreement executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

**TRANSALTA ENERGY MARKETING
(U.S.) Inc.**

**SILICON VALLEY CLEAN ENERGY
AUTHORITY**

By: 
Name: Shauna Britton
Title: Confirmation Coordinator
Date: March 1, 2023

By: 
Name: Monica Padilla
Title: COO & Director of Power Resources
Date: 3/2/2023

EEI RESOURCE ADEQUACY CONFIRMATION

This confirmation (“Confirmation”) confirms the transaction between Direct Energy Business Marketing, LLC (“DEBM”), (“Party A”) and Silicon Valley Clean Energy Authority (“Party B”), each individually a “Party” and together the “Parties”, dated as of February 23, 2023 (the “Effective Date”), by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties dated November 28, 2016 as amended from time to time (the “Master Agreement”). The Master Agreement and this Confirmation, including any applicable appendices, exhibits or amendments hereto, shall be collectively referred to herein as the “Agreement” and shall constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff. References to Sections are references to Sections of this Confirmation unless stated to be references to Sections of the Master Agreement or a statute.

The terms of the Transaction to which this Confirmation relates are as follows:

Seller:	Direct Energy Business Marketing, LLC Ref: 96723000	Buyer:	Silicon Valley Clean Energy Authority
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Product:	<input checked="" type="checkbox"/> RAR <input type="checkbox"/> Local RAR <input type="checkbox"/> Flexible Capacity, as further described in Appendix B
Contract Price (\$/kW-day):	
Contract Quantity (MW):	
Delivery Period:	
Unit Information:	Described in Appendix B
Payment Terms:	20 th Day of the month following the Delivery Period, as further described in Article 3

This Confirmation is subject to the Appendices identified below and attached hereto:
Appendix A – Defined Terms Appendix B – Product and Unit Information Appendix C – Notice Information Appendix D – Planned Outage Schedule

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

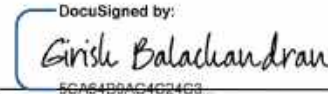
Direct Energy Business Marketing, LLC

Silicon Valley Clean Energy Authority

Sign: 

Print: Jay Robertson

Title: Director, West Commercial Operations

Sign: 

Print: Girish Balachandran

Title: CEO

ARTICLE 1

TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are described on page 1 of this Confirmation and in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Buyer 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 Buyer 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 Buyer for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Buyer 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 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 Buyer 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 Buyer 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 Buyer 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 day of the Delivery Period, Seller shall sell and deliver to Buyer, and Buyer 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.
- (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 Buyer, 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 day of the Delivery Period, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Buyer for each day of the Delivery Period. The total amount of Product identified and confirmed for each day of the Delivery Period shall equal the Expected Contract Quantity.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B. 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 Buyer with the specific information contemplated in Appendix B no later than the Notification Deadline for the Delivery Period.
- (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 day of the Delivery Period, 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 Delivery Period.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any day of the Delivery Period 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) Buyer has elected to submit the Product from the Shown Unit(s) 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 day of the Delivery Period in such amount as instructed by Buyer for the applicable day(s) of the Delivery Period. Seller shall not have failed to deliver the Expected Contract Quantity if Buyer 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 Buyer or Seller to file an advice letter or other request for authorization with the CPUC.

2.2 Adjustments to Contract Quantity

If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of the Delivery Period 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 days of such Planned Outages; provided, (i) Seller notifies Buyer by the Notification Deadline applicable to that day of the Delivery Period of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for each day of 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 Delivery Period because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Delivery Period 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 Delivery Period for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide a portion of the Contract Quantity for any day of a Delivery Period from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) for each day of the Delivery Period is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Buyer in writing of its intent to provide Alternate Capacity and shall identify the Replacement Unit(s) from which such Alternate Capacity shall be provided before the Notification Deadline for such Delivery Period; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Buyer'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 Buyer 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 Delivery Period. Buyer's approval of a Replacement Unit as to a given Delivery Period shall not be construed as approval of such Replacement Unit for any subsequent Delivery Period.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Buyer have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Delivery Periods for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Buyer with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Buyer's receipt of any such Seller proposed changes, Buyer shall notify Seller in writing of reasonable requests for modifications to such Seller proposed changes,

and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Buyer's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Buyer'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 day of the Delivery Period, Seller shall be liable for damages pursuant to Section 4.1 of the Master Agreement.
- (b) Seller shall indemnify, defend and hold harmless Buyer from any penalties, fines or costs, including Environmental Costs, assessed against Buyer 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 shall Buyer 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 Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

2.6 Buyer's Re-Sale of Product

- (a) Buyer 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. For any such a resale, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. Seller shall, or shall cause the Shown 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 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 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 Shown Unit's SC to comply with this Confirmation, Seller shall 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 shall notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two (2) Business Days before the Notification Deadline for each Delivery Period for which Buyer has resold Product. Buyer shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Delivery Period.

- (c) If CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity for re-sale into such market, and Seller and the Unit's SC shall comply with the Buyer's direction and Buyer shall retain and receive all revenues from such re-sale.
- (d) Buyer shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit's SC shall comply with the Buyer's direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then 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 CAISO) notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

ARTICLE 3

PAYMENTS

3.1 Payment

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Buyer shall pay for the Product as provided in Article Six of the Master Agreement and this Confirmation. Buyer shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice or (ii) the twentieth (20th) day of the month after the Delivery Period; provided, however, if such day is not a Business Day then payment shall be made by the following Business Day ("RA Capacity Payment"). Each Unit's RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for the relevant day of the Delivery Period, (b) the Expected Contract Quantity for the day of the Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Delivery Period that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller shall 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. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or a Subsequent Buyer. 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 Buyer under the Master Agreement.

- (b) Buyer 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 Buyer. Seller shall pay to Buyer 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, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.
- (c) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4

OTHER BUYER 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. Buyer is not liable for, and Seller shall indemnify and hold Buyer 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 Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Buyer's rights to the Expected Contract Quantity for the sole benefit of Buyer or any Subsequent Buyer, and (b) that Buyer 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 and 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 RAR 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 Buyer 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 the Shown Unit(s);
- (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 Buyer; and
- (e) Seller has notified or will notify the Shown Unit's SC that Buyer 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 Buyer, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Buyer's written request, Seller shall, in accordance with 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 5

AMENDMENTS TO THE MASTER AGREEMENT; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted at the end 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 CAISO, or any Governmental Body, because Buyer or a Subsequent Buyer is not able to include the applicable Expected Contract Quantity in a 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 the estimate in its calculation of the Settlement Amount, 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 must promptly remit to Seller the excess amount with interest in accordance with Section 6.2 of the Master 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 anything in the Master Agreement:

- (a) Buyer may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations;
- (b) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for submitting Supply Plans;
- (c) Each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and
- (d) Buyer may disclose information to any Subsequent Buyer.

5.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an “eligible contract participant” within the meaning of the United States Commodity Exchange Act §1a(18). Without limiting Section 10.10 of the Master Agreement, 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 results in any change in applicable law occurring after the Confirmation Effective Date that (i) materially changes Buyer’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 requirements for Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer’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 Product sold hereunder in order to maintain the original intent of the Parties under this

Confirmation. If the Change in Law results in the Product no longer being able to be counted towards Buyer's Resource Adequacy Requirements, and the Parties have not reached agreement within thirty (30) days after the initiation of discussions regarding the Change in Law on amendments that would allow the Product to be able to be counted towards Buyer's Resource Adequacy Requirements, Buyer may terminate this Confirmation upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

5.5 Governing Law

This Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the Master Agreement applicable to this Transaction 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.

5.6 Credit and Collateral

Except as provided in the Master Agreement, neither Party shall be required to post collateral or other security for this Transaction.

5.7 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.

5.8 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 to the contrary, this Transaction may be confirmed only through a written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Buyer 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 Delivery Period.

“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 the Resource Adequacy Requirements.

“Delivery Period” means the period specified in Appendix B during which Seller shall deliver the Product to Buyer.

“Effective Flexible Capacity” has the meaning given in the CAISO 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 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 as Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide as 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.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity” or “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.

“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.

“Net Qualifying Capacity” has the meaning given in the CAISO Tariff.

“Notification Deadline” is five (5) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, or three (3) Business Days before the relevant deadlines for the corresponding Compliance Showings for the Delivery Period, if applicable.

“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, Local RAR and/or FCR for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications described on page 1 of this Confirmation and 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 Buyer 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 Buyer 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.

“Replacement Unit” means a generating unit 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.

“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 Buyer on the Effective Date.

“Subsequent Buyer” means the Buyer of Product from Buyer in a re-sale of Product by Buyer.

“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 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

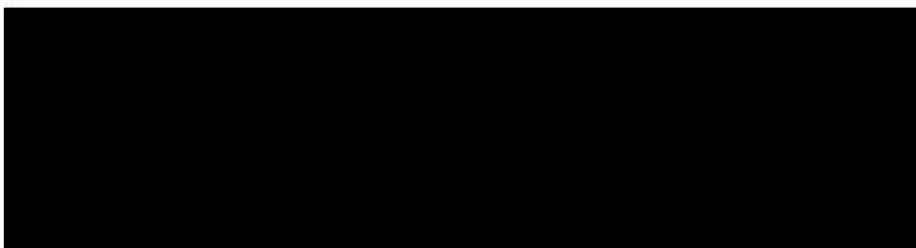
Product:

☒ RAR ☐ Local RAR ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Delivery Period: June 1, 2023 to June 30, 2023 inclusive.

Contract Quantity and Contract Price:

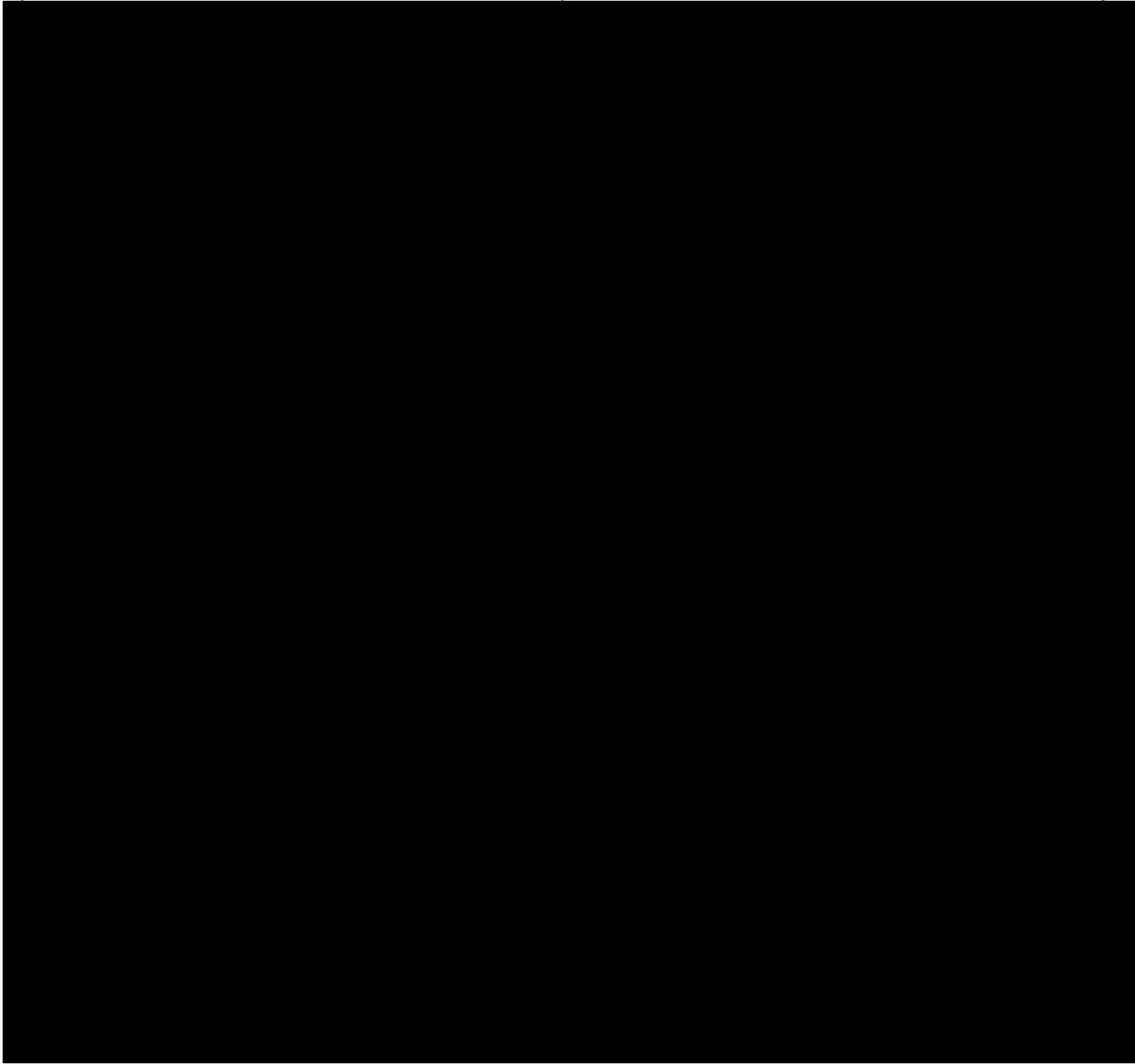


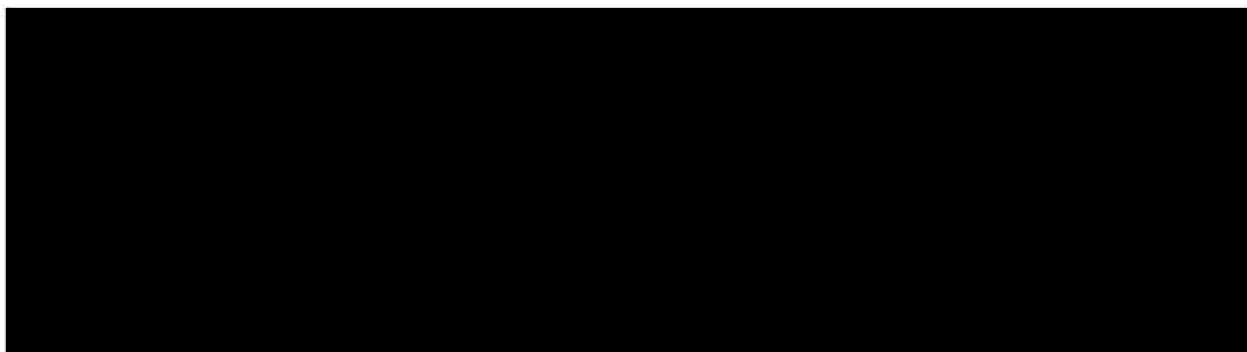
Unit Information

Name	Topaz Solar Farm
Location	San Luis Obispo County, CA
CAISO Resource ID	TOPAZ_2_SOLAR
Product Type (Flexible or Generic)	Generic
SCID of Resource	PCG2
Resource Type	Solar
Resource Category (1, 2, 3 or 4)	4
Point of Interconnection with the CAISO Controlled Grid ("Substation")	NA
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North, South or None)	North
LAR Attributes (Yes or No)	No
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None
Flexible Capacity Category (Base/Peak/Super-peak)(as of the Confirmation Effective Date)	N/A

APPENDIX C
NOTICE INFORMATION

Party A: Direct Energy Business Marketing, LLC	Party B: Silicon Valley Clean Energy Authority
All notice information for Party A will be as set forth on the Cover Sheet to the Master Agreement unless otherwise set forth below.	All notice information for Party B will be as set forth on the Cover Sheet to the Master Agreement unless otherwise set forth below.





**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

**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 March 6, 2023 (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 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).

**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: Creed Energy Center, Unit #1

Location: Suisun City, CA

CAISO Resource ID: LMBEPK_2_UNITA2

Resource Type: I_Phys_Res

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid ("Substation"): LAMBIE SW STA

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): Generic

If Generic: Unit NQC (as of the Confirmation Effective Date): 47.6

If Flexible: Unit EFC (as of the Confirmation Effective Date): N/A

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): N/A

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 June 1, 2023 through June 30, 2023, 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.

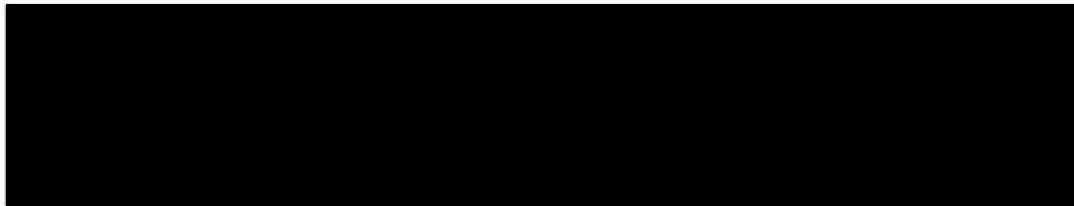
4.2 Delivery Point

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)



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;

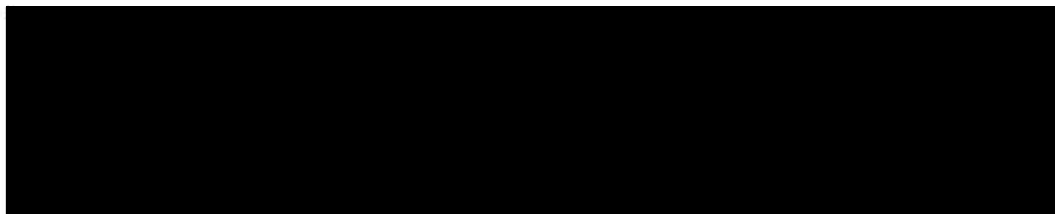
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) 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



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.

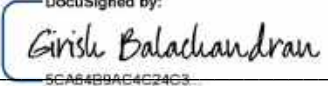
[SIGNATURE PAGE FOLLOWS]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

Silicon Valley Clean Energy Authority


By: _____
Name: William Stokes
Title: Vice President


By: _____
Name: Girish Balachandran
Title: CEO

EXECUTION DRAFT

WSPP CONFIRMATION CARBON FREE ENERGY

This confirmation (“Confirmation”) confirms the transaction between Sonoma Clean Power Authority, a California joint powers authority (“Seller”) and Silicon Valley Clean Energy, a California joint powers authority (“Purchaser” and, together with Purchaser, the “Parties” and each individually, a “Party”) dated as of March 17th, 2023 (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 to terms of the WSPP Agreement, effective as of August 12, 2021, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference (the “Master Agreement”) and as amended and supplemented by this Confirmation; provided that, in the case of any conflict between this Confirmation and the Master Agreement, this Confirmation will govern. The definitions and provisions contained in the Master Agreement are incorporated into this Confirmation, except as otherwise modified herein. This Confirmation and the Master Agreement, including any schedules, appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement” and will constitute a single agreement between the Parties.

Product:	<p>“<u>Product</u>” means Carbon Free Energy. “<u>Carbon Free Energy</u>” means energy generated by the Resource Pools as selected by Purchaser below.</p> <p><input checked="" type="checkbox"/> Large Hydroelectric;</p> <p>The list of Resources is set forth in <u>Exhibit A</u>.</p> <p>Carbon Free Energy does not include any California RPS-eligible Energy generated from any Resource in the Resource Pool, nor does it include any California RPS-eligible attributes or any other current or future attributes associated with the Product.</p>
Contract Quantity:	
Contract Price:	
Payment:	<p>For each month during the Delivery Period, (a) Purchaser will pay Seller an amount equal to the Contract Quantity delivered in such month multiplied by the Contract Price and (b) Seller’s designee shall cause the Energy associated with the Product to be delivered to the CAISO at the Delivery Point and shall be entitled to retain all CAISO revenues associated with such Energy.</p> <p>Seller shall invoice Purchaser upon receipt of actual delivered volumes in an amount equal to the quantity of Product delivered to Purchaser during the invoice month multiplied by the Contract Price. With each invoice, Seller shall provide documentation to verify delivery of invoiced amounts of Product.</p> <p>Within ten (10) Business Days after the delivery of the invoice, Purchaser shall pay Seller the amount invoiced.</p>

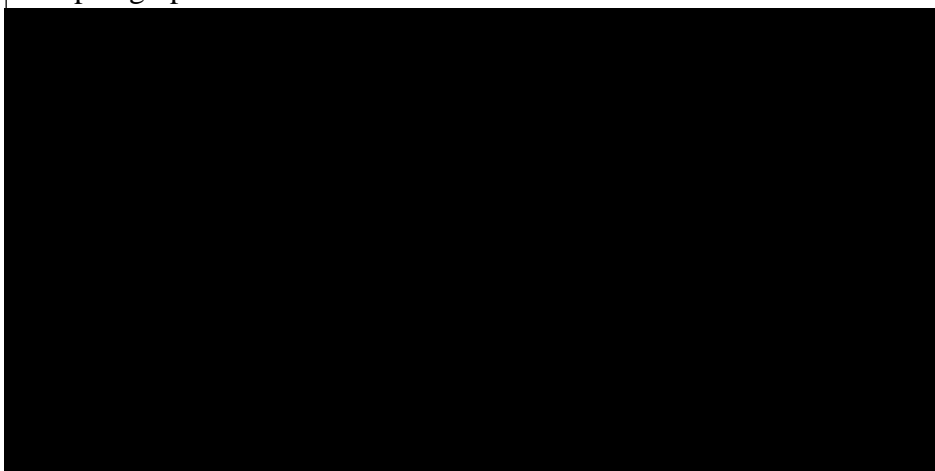
EXECUTION DRAFT

Resource Pool:	“ <u>Resource Pool</u> ” means, collectively, one or more of the Resources specified in <u>Exhibit A</u> for the Resource Pool.
Delivery Period:	The “ <u>Delivery Period</u> ” shall commence on March 17th, 2023 through <u>December 31st</u> , 2023, inclusive.
Delivery Point:	“ <u>Delivery Point</u> ” means where Seller shall deliver to, and Purchaser shall take possession of, the Product, which shall be CAISO.
Attestation:	Seller shall provide to Purchaser a report confirming the monthly Carbon Free Energy from the Resources within the Resource Pools in a final report following the Delivery Period (the “ <u>Final Report</u> ”). The Final Report will include the Product delivered from Seller to Purchaser from each Resource from the selected Resource Pool(s) as indicated above. Seller will provide Purchaser with the Final Report promptly once the information is received from Supplier.
Scheduling:	Throughout the Delivery Period, Seller shall cause to be delivered, and Purchaser shall receive the Product in accordance with the Confirmation. Seller to deliver the Product in each hour to the CAISO at the Delivery Point.
Title and Reporting Rights:	Title to the Product shall be deemed to pass from Seller to Purchaser at the Delivery Point.
Seller Representations and Warranties:	<p>Seller represents and warrants the following:</p> <ul style="list-style-type: none"> (a) that it has the contractual rights to sell all rights, title, and interest in the Product to be delivered hereunder; (b) it has not sold the Product required to be delivered hereunder, or any attribute thereof, to any other person or entity; (c) it will not substitute or purchase any Product from any generating resource other than from the Resources in the Resource Pool for delivery hereunder, unless mutually agreed upon between Buyer and Seller; (d) To the extent reasonably available to Seller, Seller will provide all reasonable information to Purchaser necessary for Purchaser to timely comply with periodic compliance reporting requirements as set forth herein and as otherwise required by applicable law with respect to this Product, including documents that Purchaser is required to maintain or provide to the California Air Resources Board (CARB) in accordance with Assembly Bill (AB) 32. To the extent reasonably available to Seller, Seller shall maintain adequate records to reasonably assist Purchaser in meeting any reporting, verification, transfer, registration, or

EXECUTION DRAFT

	<p>retirement requirements of a Governmental Authority associated with the Confirmation.</p> <p>Seller makes no representation, warranty or covenant with respect to the following:</p> <ul style="list-style-type: none"> (a) Characterization, qualities, presence, or non-presence of any greenhouse gas (GHG) emissions of the Resources in the Resource Pools, including whether Resources in the Resource Pools emit GHGs, the type of GHGs, the carbon intensity of the Resources or Resource Pool or anything related to the environmental attributes of the Resources within the Resource Pools. (b) The ability of Purchaser to use the Product for any compliance, regulatory, or reporting purpose.
Confidentiality:	<p>Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Each Party (a “<u>Receiving Party</u>”) acknowledges that the other Party (a “<u>Disclosing Party</u>”) may submit information to the Receiving Party that the Disclosing Party considers confidential, proprietary, or trade secret information pursuant to 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). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“<u>Requestor</u>”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “<u>Confidential Information</u>”), the Receiving Party shall notify the Disclosing Party as soon as practical that such request has been made. 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 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.</p>
Governing Law:	<p>Notwithstanding Section 24 of the Master Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by</p>

EXECUTION DRAFT

	and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.
Collateral/Credit Requirements:	Notwithstanding any provision in the Master Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.
No Recourse to Members:	The Parties are each 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 each a public entity separate from their constituent members. Each Party will solely be responsible for all of its 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 the other Party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party's constituent members, in connection with this Confirmation.
Notices:	<p>Notwithstanding Section 12.1 of the Master Agreement, notices under this Confirmation shall be in writing and shall be deemed properly served, given or made if delivered by hand delivery, United States mail, overnight courier service, or email. The following names and addresses shall be used for notices and either Party may update its notice information by providing notice to the other Party in accordance with this paragraph.</p> 
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.

EXECUTION DRAFT

<p>Entire Agreement; No Oral Agreements or Modifications:</p>	<p>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.</p>
<p>Definitions:</p>	<p>Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:</p> <p>“<u>CAISO</u>” means the California Independent System Operator Corporation or the successor organization to the functions thereof.</p> <p>“<u>California RPS</u>” or “<u>California Renewables Portfolio Standard</u>” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.</p> <p>“<u>CEC</u>” means the California Energy Commission.</p> <p>“<u>CPUC</u>” means the California Public Utilities Commission.</p> <p>“<u>Energy</u>” means electrical energy, measured in MWh.</p> <p>“<u>Governmental Authority</u>” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.</p> <p>“<u>Large Hydroelectric</u>” has the meaning set forth in Cal. Code Regs., Title 20, § 1391(k).</p> <p>“<u>MW</u>” means megawatt.</p> <p>“<u>MWh</u>” means megawatt-hour.</p> <p>“<u>Resource</u>” means generation units contracted for through power purchase agreements by Seller.</p>

[Signatures appear on the following page.]

EXECUTION DRAFT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**SONOMA CLEAN POWER
AUTHORITY, a California joint powers
authority**

Sign: Michael Koszalka

Print: Michael Koszalka

Title: Chief Operating Officer

Sign: Deb Emerson

Print: Deb Emerson

Title: Managing Director

**SILICON VALLEY CLEAN ENERGY, a
California joint powers authority**

Sign: DocuSigned by:
Girish Balachandran
5CA04B8AC4C24C3

Print: Girish Balachandran

Title: Chief Executive Officer

EXECUTION DRAFT

EXHIBIT A**List of Resources by Resource Pool**

Resource Pool

Resource Name	CAISO Resource ID	EIA IDs
Balch #1 PH	BALCHS_7_UNIT 1	217
Balch #2 PH	BALCHS_7_UNIT 2 BALCHS_7_UNIT 3	218
Belden	BELDEN_7_UNIT 1	219
Bucks Creek	BUCKCK_7_PL1X2	220
Butt Valley	BUTTVL_7_UNIT 1	221
Caribou 1	CARBOU_7_UNIT 1 CARBOU_7_PL2X3	222
Caribou 2	CARBOU_7_PL4X5	223
Cresta	CRESTA_7_PL1X2	231
Drum #1	DRUM_7_PL1X2 DRUM_7_PL3X4	235
Drum #2	DRUM_7_UNIT 5	236
Electra	ELECTR_7_PL1X3	239
Haas	HAASPH_7_PL1X2	240
James B Black	BLACK_7_UNIT 1 BLACK_7_UNIT 2	249
Kerckhoff #2 PH	KERKH2_7_UNIT 1	682
Kings River	KINGRV_7_UNIT 1	254
Pit 1	PIT1_7_UNIT 1 PIT1_7_UNIT 2	265
Pit 3	PIT3_7_PL1X3	266
Pit 4	PIT4_7_PL1X2	267
Pit 5	PIT5_7_PL1X2 PIT5_7_PL3X4	268
Pit 6	PIT6_7_UNIT 1 PIT6_7_UNIT 2	269
Pit 7	PIT7_7_UNIT 1 PIT7_7_UNIT 2	270
Poe	POEPH_7_UNIT 1 POEPH_7_UNIT 2	272
Rock Creek	RCKCRK_7_UNIT 1 RCKCRK_7_UNIT 2	275
Salt Springs	SALTSP_7_UNITS	279
Stanislaus	STANIS_7_UNIT 1	285
Tiger Creek	TIGRCK_7_UNITS	287
NID-Chicago Park	CHICPK_7_UNIT 1	412
Hoover Large Hydro	NA/ Import	154

WSPP RESOURCE ADEQUACY CONFIRMATION

This confirmation under the WSPP Agreement (“Confirmation”) confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority (“SVCE”) and Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), and each individually a “Party” and together the “Parties”, dated as of March 9, 2023 (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 August 26, 2022 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments hereto, 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.

The terms of the Transaction to which this Confirmation relates are as follows:

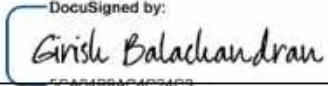
Purchaser :	Silicon Valley Clean Energy	Seller :	Clean Power Alliance of Southern California
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Product:	<input checked="" type="checkbox"/> RAR <input type="checkbox"/> Local RAR <input checked="" type="checkbox"/> Flexible Capacity, as further described in Appendix B
Contract Price (\$/kW-mo):	
Contract Quantity (MW):	
Delivery Period:	
Unit:	
Payment Terms:	
Collateral:	
Total Notional Value:	

This Confirmation is subject to the Appendices identified below and attached hereto:
Appendix A – Defined Terms Appendix B – Product and Unit Information Appendix C – Notice Information Appendix D – Planned Outage Schedule

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

**SILICON VALLEY CLEAN ENERGY, a
California joint powers authority**

Sign:  _____
5CA04B9AC4C24C3

Print: _____ Girish Balachandran _____

Title: _____ Chief Executive Officer _____

**CLEAN POWER ALLIANCE OF
SOUTHERN CALIFORNIA, a California
joint powers authority**

Sign:  _____

Print: _____ Matthew Langer _____

Title: _____ Chief Operating Officer _____

ARTICLE 1 TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are described on page 1 of this Confirmation and 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 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 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 each day of 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 each day of such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B. 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(s) 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 shall 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.¹

2.2 Adjustments to 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 Unit 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 Unit that Purchaser may include in Purchaser's Compliance Showings for each day of 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 a portion of the Contract Quantity for any day of a 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 in an amount such that the total amount of Product provided to Purchaser from the Unit 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 and shall identify the Replacement Unit(s) from which such Alternate Capacity shall be provided before the Notification Deadline for 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.

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

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 such Seller proposed changes, Purchaser shall notify Seller in writing of 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 shall 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 shall 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 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 shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity for re-sale into such market, and Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.
- (d) Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit's SC shall comply with the Purchaser's direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Purchaser shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Purchaser, (i) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then 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 CAISO) notify Purchaser of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit's SC to not, accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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) Business Days after Purchaser's receipt of Seller's invoice or (ii) the twentieth (20th) day of the Showing Month; provided, however, if such day is not a Business Day then payment shall be made on the 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 shall 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) 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 and 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 RAR 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 the Shown Unit(s);

- (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

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (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 submitting Supply Plans; and (iii) Purchaser may disclose information to any 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.). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential.

- (b) Upon request or demand of any third person or entity not a Party hereto to CPA pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), CPA will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by CPA. If Seller takes no such action after receiving the foregoing notice from CPA, CPA shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, CPA shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless CPA, its officers, employees and agents ("CPA Indemnified Parties") from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of CPA Indemnified Parties for CPA's refusal to disclose any Requested Confidential Information.

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 results in any change in applicable law occurring after the Confirmation Effective Date that (i) materially changes 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 Product sold hereunder in order to maintain the original intent. If the Change in Law results in the

Product no longer being able to be counted towards Purchaser's Resource Adequacy Requirements, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Change in Law that would allow the Product to be able to be counted towards Purchaser's Resource Adequacy Requirements, Purchaser may terminate this Confirmation upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

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.

[REDACTED]

[REDACTED]

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 will 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 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 “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3 of the WSPP Agreement is amended by:

In Section 22.3(c), 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.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN LOS ANGELES, 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:

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.”

5.9 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, 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.

5.10 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.

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 the Resource Adequacy Requirements.

“Effective Flexible Capacity” has the meaning given in the CAISO 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 as Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide as 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.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity” or “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.

“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.

“Net Qualifying Capacity” has the meaning given in the CAISO 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, Local RAR and/or FCR for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications described on page 1 of this Confirmation and 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.

“Replacement Unit” means a generating unit 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.

“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.

“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:

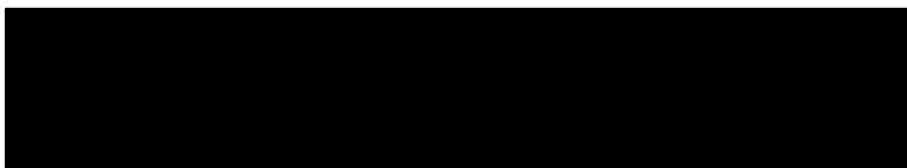
☒ RAR ☐ Local RAR ☒ Flexible Capacity

and all Capacity Attributes related to such Product.

Delivery Period: June 1, 2023 - June 30, 2023, inclusive.

Contract Quantity and Contract Price:

RAR and Flex RAR, as applicable

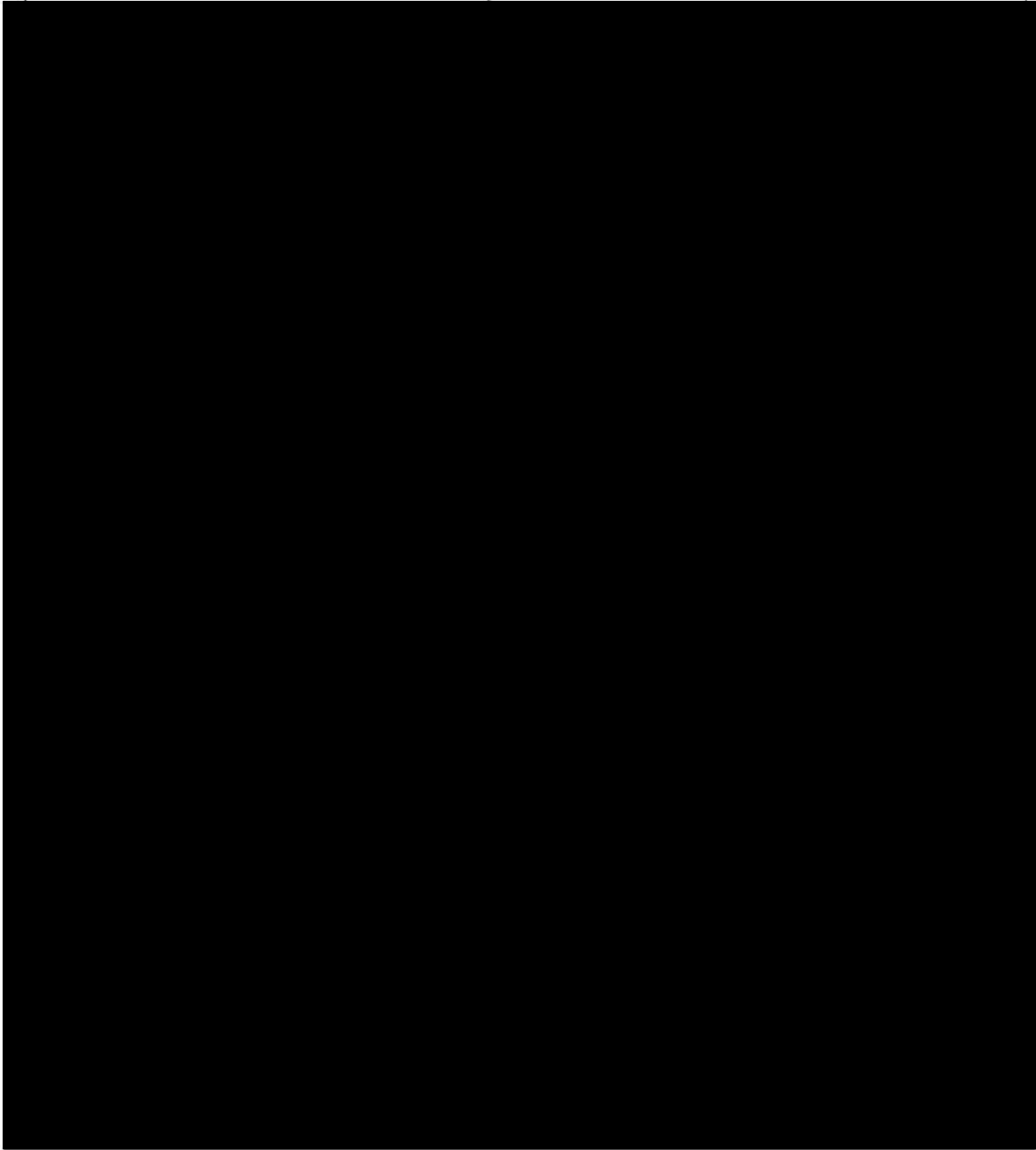


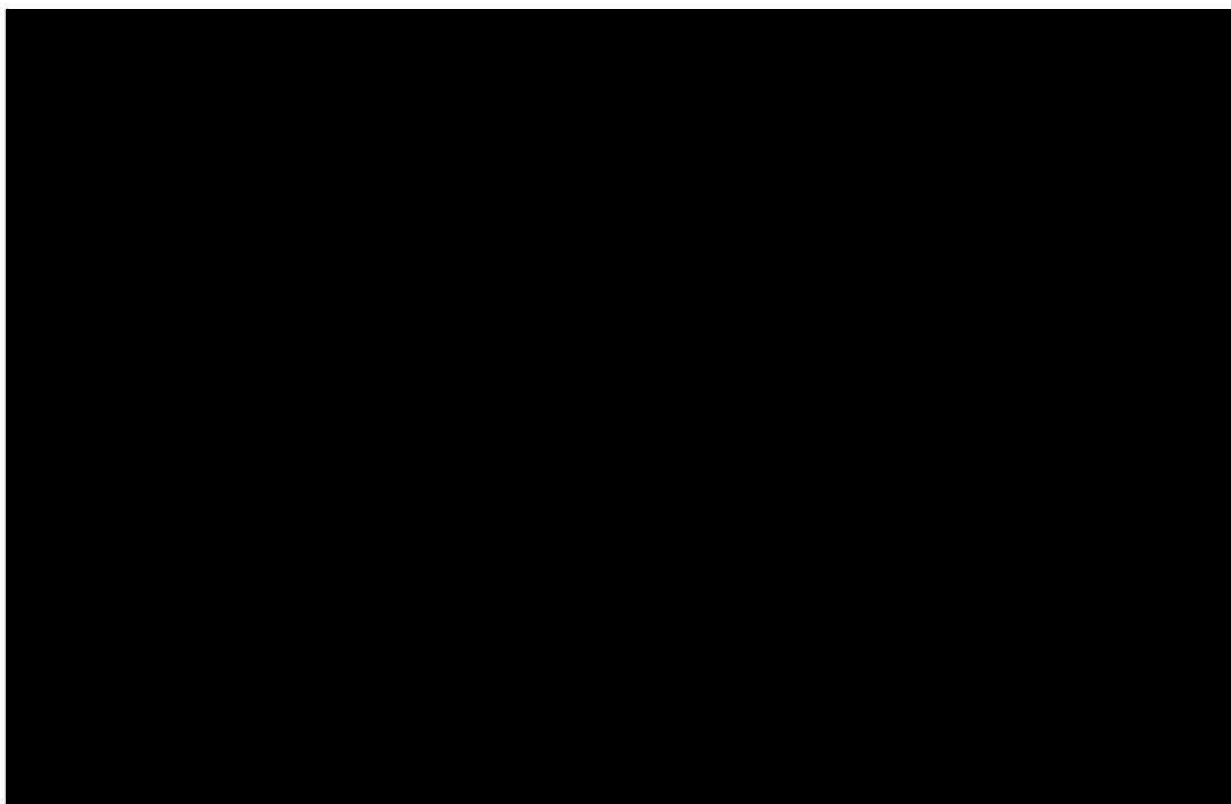
Unit 1

Unit Specific Information	
Resource Name	Exchequer Hydro
Physical Location	Snelling, CA
CAISO Resource ID	EXCHEC_7_UNIT 1
SCID of Resource	MEID
Unit NQC by month (e.g., Jan=50, Feb=65):	91.89
Unit EFC by month (e.g., Jan=30, Feb=50)	91.89
Resource Type (e.g., gas, hydro, solar, etc.)	Hydro
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	Varies
Prorated Percentage of Unit Flexible Factor	Varies
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

APPENDIX C
NOTICE INFORMATION

Buyer: Silicon Valley Clean Energy	Seller: Clean Power Alliance of Southern California
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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

EXECUTION VERSION**RESOURCE ADEQUACY CONFIRMATION LETTER**

This confirmation letter (“Confirmation”) confirms the transaction agreed to on March 15, 2023 (the “Confirmation Date”), between Constellation Energy Generation, LLC and Silicon Valley Clean Energy Authority, by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product (the “Transaction”), and is governed by the EEI Master Power Purchase and Sale Agreement between the Parties, effective as of November 28, 2016 together with the Cover Sheet and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Seller: Constellation Energy Generation, LLC

Buyer: Silicon Valley Clean Energy Authority

Product, Delivery Period, 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 Buyer, and Buyer will purchase and receive from Seller, the Quantity of the Product from the Shown Unit(s).
- (b) Seller will deliver the Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Buyer, 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 CPUC and 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 and CPUC requirements to identify and confirm the Product delivered to Buyer 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 Quantity, less any excused deductions to the Quantity that is reduced or modified pursuant to Sections 2.1(i), (j) or (k), as applicable.
- (d) If Seller desires to provide the Quantity of Product for any Showing Month during the Delivery Period from a generating unit other than the Unit (a “Replacement

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Unit”), then Seller may, at no cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the 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 2.1, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

- (e) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B, including the Resource Category and the Flexible Capacity Category. Seller will identify the Shown Unit(s) and Quantity by providing Buyer with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (f) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the 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.
- (g) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Buyer’s instruction to withhold all or part of the 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 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 Quantity for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Buyer will have received the Quantity if (i) Seller’s Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer’s instruction to withhold all or part of the Quantity from Seller’s Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Quantity if Buyer fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (h) The Shown Unit must not have characteristics that would trigger the need for Buyer or Seller to file an advice letter or other request for authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380.¹
- (i) Seller’s obligation to deliver the Quantity may be reduced if the Unit experiences a reduction in Unit NQC. If the Unit experiences such a reduction in Unit NQC after

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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the Effective Date, then Seller has the option, but not the obligation, to provide the applicable Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available RA Capacity and/or (ii) from a unit that meets requirements set forth in Appendix B. To the extent Seller chooses not to provide the Quantity, then Seller's obligation to deliver Quantity shall be reduced by (i) the Quantity for such day multiplied by (ii) the total amount (in MW) by which the Unit NQC was reduced since the Effective Date, divided by (iii) the Unit NQC as of the Effective Date.

- (j) If the Product includes FCR Attributes, then Seller's failure to deliver any of the Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Confirmation Date as determined by CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the applicable Showing Month. The extent to which Seller's failure is excused will equal (i) the Quantity of FCR Attributes for such day multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Confirmation Date, divided by (iii) the Unit EFC as of the Confirmation 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 Quantity of FCR Attributes for such day from the Shown Unit.
- (k) 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 from and after such replacement Seller will convey the equivalent amount of qualifying capacity of such Unit on a pro rata basis (i.e. following such replacement, Seller's delivery obligation will be obtained by calculating the product of (i) the Quantity divided by the Unit NQC, multiplied by (ii) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

2.2 Buyer's Remedies for Seller's Failure to Deliver Quantity

- (a) If Seller fails to deliver any part of the Quantity as required herein for any Showing Month, except to the extent such obligation to provide the Quantity is reduced or modified pursuant to Section 2.1(i), (j) or (k), as applicable, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement.
- (b) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs, including Environmental Costs, assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product, except to the extent such obligation to provide the Quantity is reduced or modified pursuant to Section 2.1(i), (j) or (k), as applicable. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Buyer be required to use or change its utilization of

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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 Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and Seller and the Unit's Scheduling Coordinator shall comply with Buyer's direction to the extent Seller is not required to incur any additional costs to qualify such Quantity of Product for participation in such centralized capacity market or follow such direction from Buyer. Buyer shall retain and receive all revenues from such re-sale.

2.3 Buyer's Re-Sale of Product

- (a) Buyer 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 2.3(a). For any such a resale, Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. 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. Without limiting the foregoing provisions of this Section 2.3(a), if during the Delivery Period the CPUC implements a central procurement structure that identifies a central buyer to procure Capacity Attributes on behalf of LSEs, on either a full or residual basis, Seller shall take all commercially reasonable actions to assist Buyer with selling Capacity Attributes, as applicable, from the Quantity to such central buyer; provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation, including without limitation the Contract Price, Delivery Period or the applicable Capacity Attributes.
- (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

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resales no later than two Business Days before the Notification Deadline for the Showing Month.

ARTICLE 3
PAYMENTS**3.1 Payment**

After Seller has delivered the Quantity in accordance with Section 2.1 and issued its invoice, Buyer must pay for the Product as provided in Section 6.2 of the Master Agreement. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the 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 Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time of the CAISO filing 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 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. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or a Subsequent Buyer. 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 Buyer under the Master Agreement.
- (b) Buyer is to receive and retain all revenues associated with the 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 Buyer. Seller must pay to Buyer any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.
- (c) If CAISO designates any part of the 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 Buyer and not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

EXECUTION VERSION**ARTICLE 4**
OTHER BUYER AND SELLER COVENANTS**4.1 CAISO Requirements**

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the 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. Buyer is not liable for, and Seller will indemnify and hold Buyer 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 Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Buyer's rights to the Quantity for the sole benefit of Buyer or any Subsequent Buyer. 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 Buyer throughout the Delivery Period that:

- (a) no part of the 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 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 Quantity of Product for the Delivery Period to Buyer; and
- (e) Seller has notified or will notify the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

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ARTICLE 5
ADDITIONAL MASTER AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is added to 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 CAISO, or any Governmental Body, because Buyer or a Subsequent Buyer is not able to include the applicable Quantity in a 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 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 Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer must promptly remit to Seller the excess amount with interest in accordance with Section 6.3 of the Master 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 10.11 of the Master Agreement, (i) Buyer 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 Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information to any Subsequent Buyer.

5.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an “eligible commercial entity” and an “eligible contract participant” within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively. 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 Governing Law

EXECUTION VERSION

For this Transaction, Section 10.6 of the Master Agreement is amended to replace “NEW YORK” with “CALIFORNIA”.

5.5 Collateral

Notwithstanding any provision in the Master Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

[Signature page follows]

EXECUTION VERSION

AGREED AS OF THE CONFIRMATION DATE:

CONSTELLATION ENERGY
GENERATION, LLC

SILICON VALLEY CLEAN ENERGY
AUTHORITY

By: Matthew A. Stasch
Name: Matthew A. Stasch
Title: VP, Chief Risk Officer

By: Girish Balachandran
Name: Girish Balachandran
Title: Chief Executive Officer

APPENDIX A DEFINED TERMS

“CAISO” means the California ISO.

“Capacity Attributes” means, with respect to a Unit, any and all attributes of the Unit, consistent with the operational limits and physical characteristics of such 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.

“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.

“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, consistent with the operational limits and physical characteristics of such 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.

"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.

"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, for the Delivery Period, Unit, 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 Confirmation Date that is dedicated to Buyer under this Transaction.

"Prorated Percentage of Unit Flexible Factor" means the percentage, as specified in Appendix B, of the Unit EFC as of the Confirmation Date that is dedicated to Buyer 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.

"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 Buyer on the Confirmation Date.

"Subsequent Buyer" means the buyer of Product from Buyer in a re-sale of Product by Buyer.

"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 Shown Unit.

“Unit EFC” means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Confirmation 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 (i) CAISO or (ii) the CPUC. The Parties agree that if either the CAISO or CPUC 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 Net Qualifying Capacity for the applicable Delivery Period as adjusted by the CAISO or CPUC.

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: As specified in unit tables

MCC Bucket: As specified in unit tables

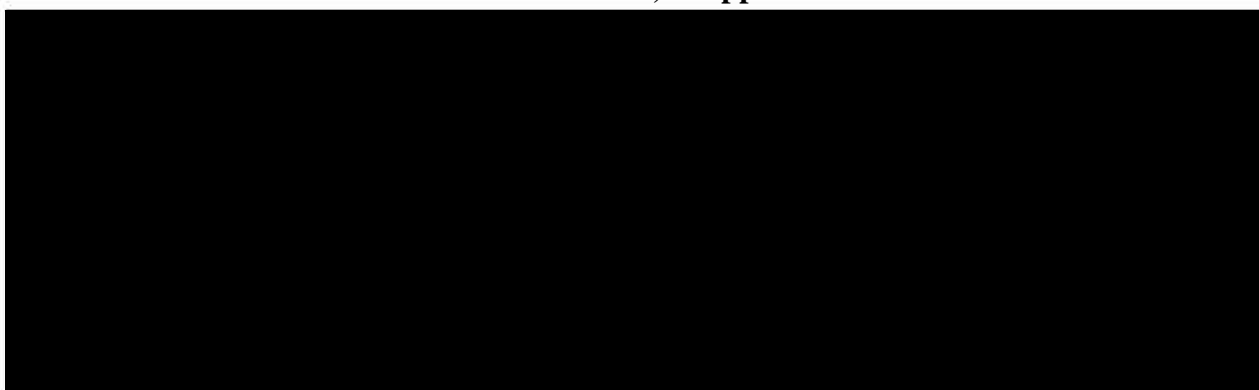
CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): As specified in unit tables

Delivery period: June 1, 2023 through June 30, 2023

Quantity and Contract Price:

RAR and Local RAR, as applicable



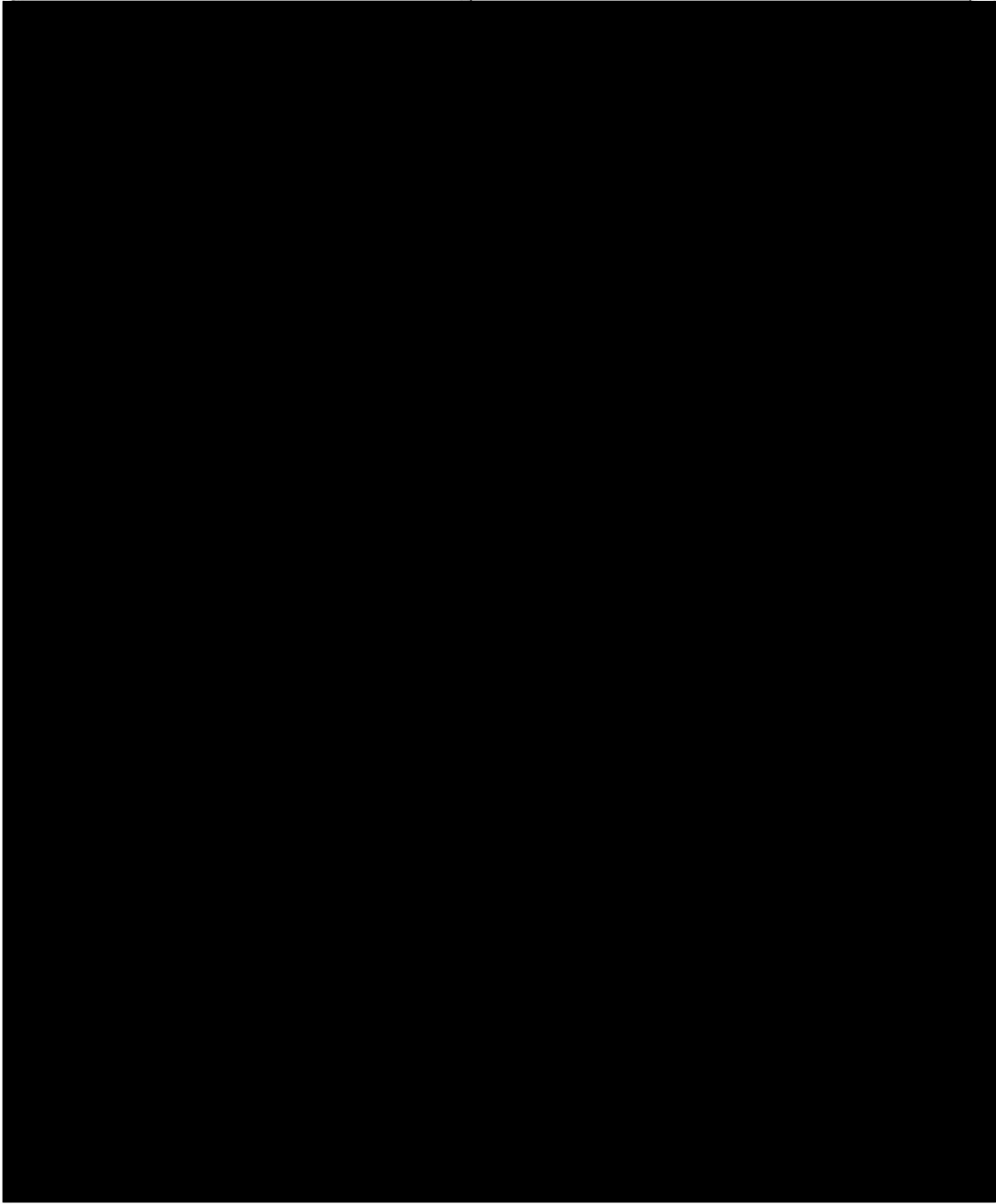
Unit 1

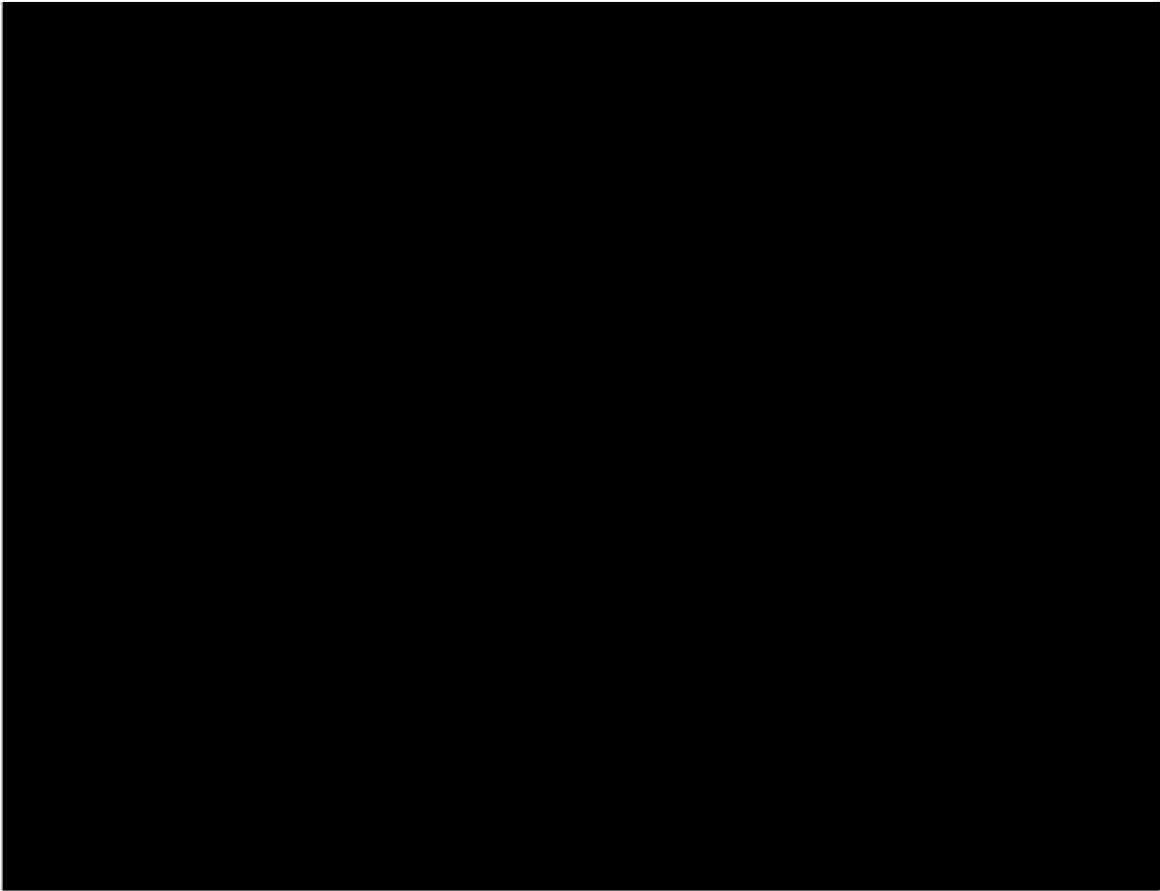
Unit Specific Information	
Resource Name	Dracker Solar Unit 1 BESS
CAISO Resource ID	DRACKR_2_DSUBT1
SCID of Resource	LPGE
Unit NQC by month (e.g., Jan=50, Feb=65):	63.00 MW
Unit EFC by month (e.g., Jan=30, Feb=50)	126.00
Resource Type (e.g., gas, hydro, solar, etc.)	Battery Storage
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	3
TAC Area (North or South)	South
Prorated Percentage of Unit Factor	15.87%
Prorated Percentage of Unit Flexible Factor	15.87%
Capacity Area (CAISO System, Fresno, Sierra, , Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	1

Unit 2

Unit Specific Information	
Resource Name	Sunrise Power Project
CAISO Resource ID	SUNRIS_2_PL1X3
SCID of Resource	NRG1
Unit NQC by month (e.g., Jan=50, Feb=65):	586.02 MW
Unit EFC by month (e.g., Jan=30, Feb=50)	491.02 MW
Resource Type (e.g., gas, hydro, solar, etc.)	Gas
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
TAC Area (North or South)	North
Prorated Percentage of Unit Factor	8.53%
Prorated Percentage of Unit Flexible Factor	5.09%
Capacity Area (CAISO System, Fresno, Sierra, , Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

APPENDIX C
NOTICE INFORMATION

Silicon Valley Clean Energy Authority	Constellation Energy Generation, LLC
	



RESOURCE ADEQUACY CONFIRMATION LETTER

This confirmation letter ("Confirmation") confirms the transaction dated as of March 20, 2023 (the "Confirmation Date"), between Long Beach Generation LLC ("Long Beach") and Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCE"), by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product (the "Transaction"). This Transaction is governed by the terms of Western Systems Power Pool Agreement effective as of August 26, 2022 along with any annexes and amendments thereto (collectively, the "WSPP Agreement"), which are incorporated herein by reference. Any conflicts between the WSPP Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the WSPP Agreement. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 TRANSACTION TERMS

1.1 Parties

Buyer: SVCE

Seller: Long Beach

1.2 Quantity, Contract Price, etc.

Product, Delivery Period, Quantity, Contract Price and other specifics of the Product for each Transaction entered into pursuant to this Confirmation are set forth in Appendix B. Appendices A, B and C are incorporated into this Confirmation.

1.3 Separate Transactions

Each Appendix B attached to this Confirmation memorializes a separate "Transaction" for the purposes of this Confirmation, including the rights and obligations of Buyer and Seller with respect to performance, payment, default and termination.

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 Buyer, and Buyer will purchase and receive from Seller, the Quantity of the Product from the Shown Unit(s).
- (b) Seller will deliver the Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Buyer, 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 CPUC and 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 and CPUC requirements to identify and confirm the Product delivered to Buyer 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 Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation, less any excused deductions to the Quantity.
- (d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. Seller will identify the Shown Unit(s) and Quantity by providing Buyer 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 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.
- (f) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the 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 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 Quantity for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Buyer will have received the Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer's instruction to withhold all or part of the Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Quantity if Buyer 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 Buyer or Seller to file an advice letter or other request for authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380.
- (h) Reductions in Unit NQC: Seller's obligation to deliver the applicable Quantity for any Showing Month may be reduced if the Unit experiences a reduction in Unit NQC after the Confirmation Date as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the

obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) alternate capacity from a Shown Unit. If the Seller forgoes the option in the preceding sentence, then in such an event, the Quantity for such Unit may be reduced in a pro rata amount with all other Product sales calculated with reference to the difference in Unit NQC and the then current Unit NQC. Seller shall provide notice to Buyer within three (3) business days of becoming aware that Unit NQC has been reduced.

- (i) Excused Reductions in Unit EFC: If the Product includes FCR Attributes, then Seller's failure to deliver any of the Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Confirmation Date as determined by CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the applicable Showing Month. In the event of such excused reductions in Unit EFC, Seller shall convey to Buyer a revised amount of qualifying EFC 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. The extent to which Seller's failure is excused will equal (i) the Quantity of FCR Attributes for such month multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Confirmation Date, divided by (iii) the Unit EFC as of the Confirmation 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 Quantity of FCR Attributes for such day from the Shown Unit.

2.2 Buyer's Remedies for Seller's Failure to Deliver Quantity

- (a) If Seller fails to deliver any part of the Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to indemnify Buyer from any penalties, fines or costs, including Environmental Costs, assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting directly 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 Buyer 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 Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer 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.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's SC to offer, bid, or otherwise submit the 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 resale.

2.3 Buyer's Re-Sale of Product

- (a) Buyer 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 2.3(a), and provided further that Buyer shall remain liable for payment under this Confirmation, notwithstanding such resale. For any such a resale, Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. 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. Notwithstanding the foregoing, any rights granted under this paragraph do not apply to the CAISO's Competitive Solicitation Processes framework in Section 43A.4 of the Tariff; in the event either Party intends to participate in the CAISO's Competitive Solicitation Processes, then the Parties shall coordinate compliance with the CAISO's requirements for such participation. 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.

ARTICLE 3 PAYMENTS AND COLLATERAL

3.1 Payment

After Seller has delivered the Quantity in accordance with Section 2.1 and issued its invoice consistent with the provisions of this Section 3.1, Buyer must pay for the Product as provided in Article 9 of the WSPP Agreement. Seller shall issue a monthly invoice for the Product, in arrears, which shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Quantity for the Showing Month, less any portion of the Quantity that was not delivered in accordance with Section 2.1, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places) (the "Monthly RA Capacity Payment"). Buyer shall make the Monthly RA Capacity Payment by the later of (i) ten (10) days after Buyer's receipt of Seller's invoice and (ii) the twentieth (20th) day of the Showing Month, and if such day is not a Business Day, the next following Business Day.

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 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. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or a Subsequent Buyer. 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 Buyer under the WSPP Agreement.
- (b) Buyer is to receive and retain all revenues associated with the 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 Buyer. Seller must pay to Buyer any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer 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 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 Buyer and not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

3.3 Credit and Collateral Requirements

- (a) Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, Buyer shall not be required to post collateral or other security for this Transaction.
- (b) Buyer shall have the right to become a Joining Party to that certain Collateral Agency and Intercreditor Agreement, dated as of December 1, 2021 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Intercreditor Agreement"), by and among Generation Bridge, LLC, a Delaware limited liability company, the other Obligors from time to time party thereto, Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent, and the other parties from time to time party thereto. Pursuant to the Intercreditor Agreement, the obligations of Seller under this Confirmation will become Secured Obligations and Buyer will become a Secured Party. Capitalized terms used in this Section 3.3(b) without definition shall have the respective

meaning assigned in the Intercreditor Agreement. During any period in which the Intercreditor Agreement remains in full force and effect and Buyer is entitled to the rights of a Joining Party thereunder, notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, Seller shall not be required to post additional collateral or other security for this Transaction.

ARTICLE 4

OTHER BUYER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the 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. Buyer is not liable for, and Seller will indemnify and hold Buyer 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 Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Buyer's rights to the Quantity for the sole benefit of Buyer or any Subsequent Buyer. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform these Transactions to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of each Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Buyer throughout the Delivery Period that:

- (a) no part of the 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 Quantity of Product for the Delivery Period to Buyer; and

- (e) Seller has notified or will notify the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

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, 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 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 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 Buyer seeks to use such Substitute Capacity as required by the CAISO. The portion of the Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed 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 Section 2.2. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Article Five.

ARTICLE 6

ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Confirmation, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Buyer or a Subsequent Buyer is not able to include the applicable Quantity in a 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 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 Buyer's estimate exceeds the actual amount of penalties, fines or costs, Buyer 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 each Transaction and continue until after those penalties, fines or costs are finally ascertained."

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement,, (i) Buyer 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 Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information to any Subsequent Buyer. Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 7920 et seq.).

6.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an "eligible contract participant" within the meaning of United States Commodity Exchange Act §1a(18). Without limiting Section 10.10 of the Master Agreement, the Parties intend these Transactions 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 Waiver of Jury Trial

EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS CONFIRMATION. EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE ENTERED INTO THIS CONFIRMATION, IN RELIANCE ON, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PROVISION.

6.5 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 9.4 is deleted in its entirety and replaced with the following:

"In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, 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. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”

- (b) 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.”

- (c) 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.

- (d) 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.”

- (e) Section 22.3(e) is deleted in its entirety and replaced with the following: “[Intentionally omitted]”

- (f) Section 22.3(f) is deleted in its entirety and replaced 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.”

- (g) 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 Date.
- (h) 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”.
- (i) 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.”

- (j) In Section 34.4, the phrase “arbitration or” is deleted from the first line.
- (k) 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.”

- (l) Section 37 is amended by inserting the following in the beginning thereof: “On the date of entering into this Confirmation,”.
- (m) 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.”

6.6 Governing Law

- (a) For each Transaction, Section 13.1 of the WSPP Agreement is amended to change “FERC” to “FERC or the CPUC”.
- (b) 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.”

6.7 Forward Contracts

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 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.”

6.8 Joint Powers Authority

Buyer 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. Buyer 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 Buyer’s members, any cities or counties participating in Buyer’s community choice aggregation program, or any of Buyer’s retail customers in connection with this Confirmation.


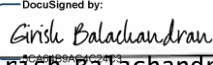
6.9 Counterparts

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 as a PDF attachment to an email 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 Transactions 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 to the contrary, the Transactions may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to the Transactions shall be enforceable except through a Documentary Writing executed by both Parties.

AGREED AS OF THE CONFIRMATION DATE:

Long Beach Generation LLC	Silicon Valley Clean Energy Authority
By: <u></u> Name: Daniel R. Revers Title: President	By: <u></u> Name: GIRISH Balachandran Title: CEO

APPENDIX A DEFINED TERMS

“Buyer” as used herein shall have the same meaning as “Purchaser” under the WSPP Agreement.

“CAISO” means the California ISO.

“Capacity Attributes” means attributes of the Unit that may be counted toward Compliance Obligations, including: 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.

“Contract Price” means the price specified in Appendix B for the Product during each month of the Delivery Period expressed in dollars per kilowatt-month (\$/kW-month).

“CPUC” means the California Public Utilities Commission.

“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.

“Delivery Period” means the period specified in Appendix B during which Seller shall deliver the Product to Buyer.

“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.

“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.

“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.

“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.

“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.

“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, for the Delivery Period, Unit, Quantity, Contract Price and other specifications contained in Appendix B.

“Quantity” means the amount of Product, expressed in megawatts, to be delivered each month during the Delivery Period as specified in Appendix B.

“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 Buyer on the Confirmation Date.

“Subsequent Buyer” means the buyer of Product from Buyer in a re-sale of Product by Buyer.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator submits to the CAISO, CPUC, or other applicable governmental body in order for the Capacity Attributes to count toward Compliance Obligations.

“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 or any Shown Unit.

“Unit EFC” means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Confirmation 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 Confirmation 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.

Delivery Period: January 1, 2024 through December 31, 2026, inclusive.

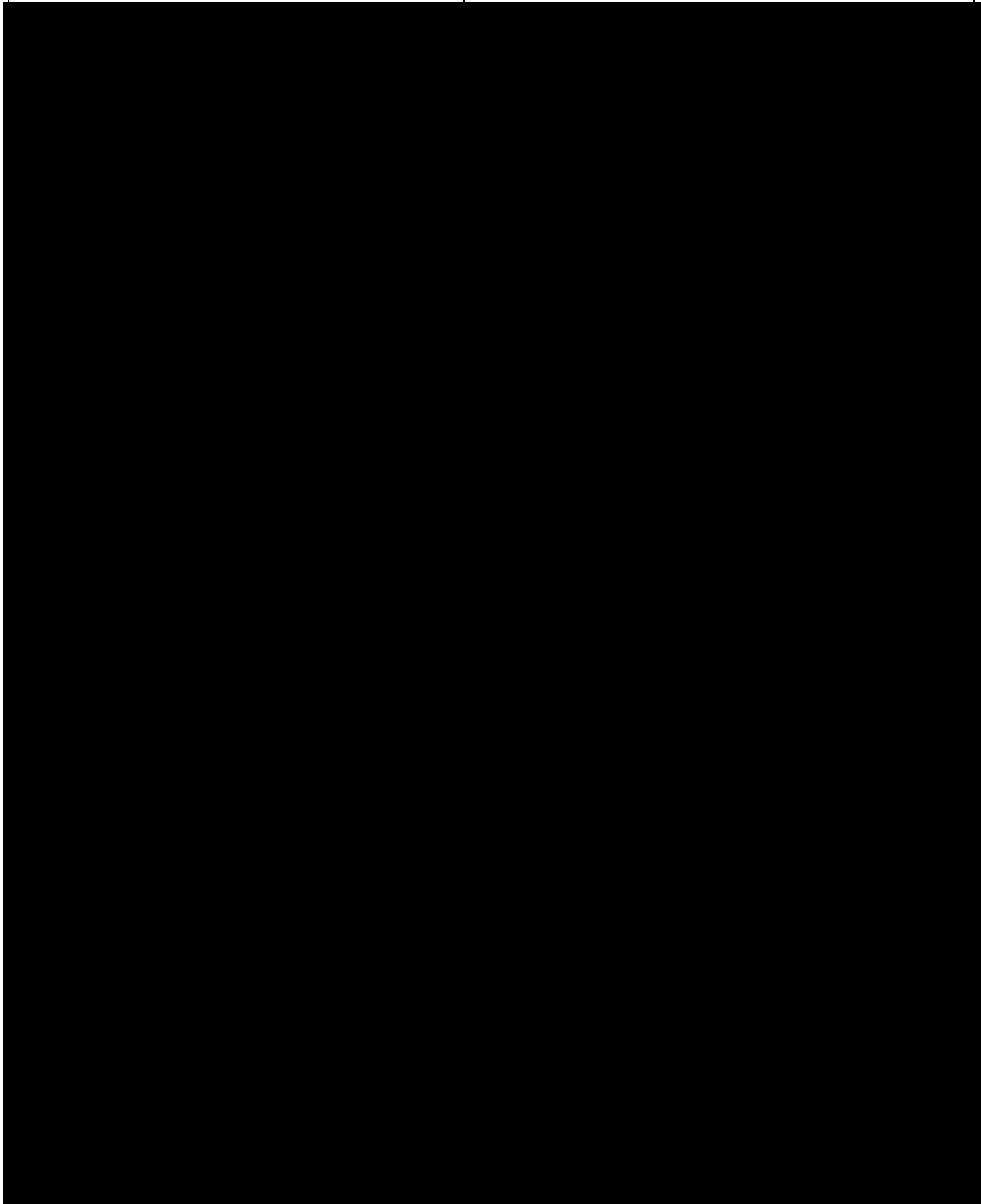
Quantity and Contract Price:

Showing Month and Year	RAR Contract Quantity (MW)	Flexible Capacity Contract Quantity (MW)	Contract Price (\$/kW-mo.)

Unit Specific Information	
Resource Name	Long Beach Facility
Physical Location	Long Beach, CA
CAISO Resource ID	HINSON_6_LBECH3
SCID of Resource	TBD
Unit NQC	63
Unit EFC	63
Resource Type (e.g., gas, hydro, solar, etc.)	Combustion Turbine
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	1
Path 26 (North or South)	South
Local Capacity Area (if any, as of Confirmation Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	Use-Limited under Air Permit

APPENDIX C
NOTICE INFORMATION

Seller: Long Beach Generation LLC	Buyer: Silicon Valley Clean Energy Authority
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*Bilateral Import Capability Transfer (Buy or Sell)***CONFIRMATION LETTER****BETWEEN****SILICON VALLEY CLEAN
ENERGY****AND****PENINSULA CLEAN
ENERGY**

This Confirmation Letter including all appendices hereto (“Confirmation”) confirms the transaction between Peninsula Clean Energy, a California joint powers authority (“Seller”), and Silicon Valley Clean Energy, a joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of March 1, 2023 (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 Transaction is governed the Western Systems Power Pool Agreement effective as of August 26, 2022, as amended from time to time, but not including any Exhibit or Service Schedule thereto unless and to the extent that such Exhibit or Service Schedule is expressly incorporated herein (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 described to them in the Master Agreement or, if not defined in the Master Agreement, in the CAISO Tariff. To the extent this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

ARTICLE 1. TRANSACTION TERMS**1.1 Product**

Existing Contract Import Capability

1.2 Delivery of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller, the Product at the Delivery Point in the amount of the applicable Contract Quantity for each day of each month of the Delivery Period.

1.3 Delivery Period and Term

- (a) Delivery Period. The Delivery Period shall be June 1, 2023 through June 30, 2023, inclusive, 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

Bilateral Import Capability Transfer (Buy or Sell)

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 Delivery Point

The Delivery Point shall be the CAISO Branch Group corresponding to the CAISO Intertie PACI_MSL (COB).

1.5 Contract Quantity

The Contract Quantity for each day of each applicable Contract Month is as follows:

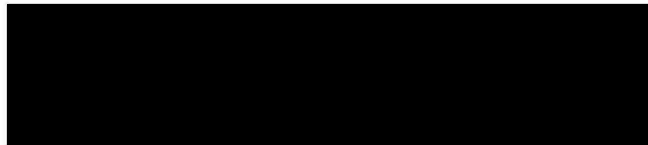
Contract Quantity (MWs for each day of such Contract Month)



1.6 Contract Price

The Contract Price means, for any Contract Month, the price specified in the Contract Price table as set forth below.

CONTRACT PRICE TABLE



ARTICLE 2. DELIVERY OBLIGATIONS

2.1 Delivery of Product

Within three (3) Business Days after the date that Seller receives the One-Time Payment from Buyer, Seller shall register the Bilateral Import Capability Transfer of the Product in the amount of the Contract Quantity at the Delivery Point in CAISO's CIRA Tool(or successor platform)(the "Registration"). Seller shall complete promptly such other actions required by the CAISO to effect such transfer. As soon as reasonably practicable thereafter, but no later than three (3) Business Days from Registration, Buyer shall accept and confirm Seller's Registration in CAISO's CIRA Tool and will then communicate to Seller whether the Bilateral Import Capability Transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point was successful or unsuccessful (a successful transfer, the "Transfer Completion Email"). If the Bilateral Import Capability Transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point is unsuccessful, the Parties shall begin the Registration process set forth in this Section 2.1 again, until the Parties receive a Transfer Completion Email.

*Bilateral Import Capability Transfer (Buy or Sell)***2.2 Buyer's Re-Sale of Product**

Buyer may re-sell, at its sole cost and expense, all or a portion of the Product acquired under this Confirmation.

ARTICLE 3. PAYMENT**3.1 One-Time Payment**

Buyer shall make a payment ("One-Time Payment") to Seller no later than (10) Business Days after the date an invoice is received. Seller shall provide Buyer the invoice for the One-Time Payment no later than seven (7) Business Days from the Confirmation Effective Date.

The One-Time Payment shall be calculated as follows:

$$\text{One-Time Payment} = \sum_i^n (A_i \times B_i \times 1000)$$

where:

A = Contract Price (in \$/kW-month) for Contract Month i

B = Contract Quantity i (in MW) transferred by Seller for Contract Month i

i = Each Contract Month

n = number Contract Months

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 under this Confirmation.

ARTICLE 4. CONFIDENTIALITY

- (a) Both Parties may disclose the terms and conditions of this 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 CEC, and any Governmental Authority; provided, that each disclosing Party shall use reasonable efforts to limit,

Bilateral Import Capability Transfer (Buy or Sell)

to the extent possible, the information disclosed and the ability of any such applicable Governmental Authority or the CAISO to further disclose such information;

- (b) Both Parties may disclose the terms of this Confirmation to the CAISO, as necessary, 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;
- (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; and
- (d) Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.); and, in the event of a public records requests pursuant to this act or any other applicable law, either party may disclose this Confirmation and such disclosure shall not be a violation of this Article 4; provided, that each disclosing Party shall first provide notice of its intended disclosure and cooperate reasonably with the other party in such other party's efforts to maintain the confidentiality of this Confirmation or its contents.

ARTICLE 5. GENERAL PROVISIONS**5.1 Governing Law**

Notwithstanding Section 24 of the Master 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.

5.2 Collateral/Credit Requirements

Notwithstanding any provision in the Master Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.3 No Recourse to Members of Buyer and Seller

Buyer and Seller are each 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 and Seller will each solely be responsible for all of its debts, obligations and liabilities accruing and arising out of this Confirmation. Neither Buyer no Seller will have any rights and shall not make any claims, take any actions or assert any

Bilateral Import Capability Transfer (Buy or Sell)

remedies against any of the other party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of such other party or such other party's constituent members, in connection with this Confirmation.

5.4 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.

5.5 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, no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signature page follows]

Bilateral Import Capability Transfer (Buy or Sell)

Appendix A

In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date:

**PENINSULA CLEAN
ENERGY**, a California joint
powers authority

By: *Janis C. Pepper*

Name: Janis C. Pepper

Title: CEO

**SILICON VALLEY CLEAN
ENERGY**, a
California joint powers authority

By:  *Girish Balachandran*

Name: Girish Balachandran

Title: CEO

*Bilateral Import Capability Transfer (Buy or Sell)***APPENDIX A****DEFINED TERMS**

“Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Bilateral Import Capability Transfer” is the transfer of Existing Contract 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 specified 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.

“CEC” means the California Energy Commission.

“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 Month” means the month during the Delivery Period as set forth in the Contract Quantity Table specified Section 1.5.

“Contract Price” has the meaning specified in Section 1.6.

“Contract Quantity” has the meaning specified in Section 1.5.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning specified in Section 1.3(a).

“Delivery Point” has the meaning specified in Section 1.4.

Bilateral Import Capability Transfer (Buy or Sell)

“Existing Contract Import Capability” has the meaning set forth in the CAISO Tariff.

“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 specified in the introductory paragraph of this Confirmation.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“Product” has the meaning specified in Section 1.1.

“Registration” has the meaning specified in Section 2.1.

“Scheduling Point” has the meaning set forth in the CAISO Tariff.

“SC” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

“Term” has the meaning specified in Section 1.3(b).

“Transfer Completion Email” has the meaning specified in Section 2.1

Confirmation for Bilateral Import Capability Transfer

This confirmation letter ("Confirmation") confirms the transaction between **Silicon Valley Clean Energy Authority, a California joint powers authority** ("Buyer"), and **Constellation Energy Generation, LLC**, a Pennsylvania limited liability company ("Seller"), each individually a "Party" and together the "Parties", effective as of March 2, 2023 (the "Confirmation Effective Date") in which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product, as such term is defined in Section 3 of this Confirmation (the "Transaction"). This Transaction is governed by the EEI Master Power Purchase and Sale Agreement dated November 28, 2016 (the "Master Agreement"). The Master Agreement and this Confirmation including any applicable appendices, exhibits or amendments thereto, 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 below).

1. Definitions

- 1.1 "Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant to another, as described in the Tariff.
- 1.2 "CAISO" means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.3 "Confirmation" has the meaning specified in the introductory paragraph.
- 1.4 "Confirmation Effective Date" has the meaning specified in the introductory paragraph.
- 1.5 "Contract Price" has the meaning set forth in Section 4.2.
- 1.6 "Contract Quantity" has the meaning set forth in Section 3.4.
- 1.7 "CPUC" means the California Public Utilities Commission.
- 1.8 "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.
- 1.9 "Master Agreement" has the meaning specified in the introductory paragraph.
- 1.10 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.11 "Period of Delivery" means the months defined in Section 2.1, inclusive.
- 1.12 "Product" has the meaning specified in Section 3.1.
- 1.13 "Seller" has the meaning specified in the introductory paragraph.
- 1.14 "Tariff" means the tariff and protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.

1.15 "Transaction" has the meaning specified in the introductory paragraph.

2. Term

2.1 Period of Delivery

The "Period of Delivery" shall begin at the beginning of hour ending ("HE") 0100 on June 1, 2023 and continue until the end of HE 2400 on June 30, 2023.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

Seller shall transfer in the manner set forth in Section 3.3, to Buyer the Remaining Import Capability, as such term is defined by the Tariff (the "Product") in the Contract Quantity, for the Period of Delivery, and at the applicable Contract Price.

3.2 Delivery Point

Name	Bilateral Import Capability Transfer
CAISO BG/MSL Name	PACI_MSL

3.3 Performance

Within three (3) Business Days of the Confirmation Effective Date, Seller shall transfer to Buyer the Product in the amount of the Contract Quantity by registering the transfer with the CAISO as a Bilateral Import Transfer Capability as such terms is defined by the Tariff, and completing any other action of documentation required by the CAISO to effect such transfer, including registering such transfer in the CAISO Customer Interface for Resource Adequacy (CIRA) system. Upon Seller registering transfer with CAISO, Buyer shall immediately confirm the transfer with CAISO by e-mail or by confirming such transfer is registered in the CIRA system, and CAISO shall indicate successful transfer to Buyer and Seller by e-mail or by confirming such transfer is registered in the CIRA system within eleven (11) Business Days of the transfer request.

3.4 Contract Quantity

For the Period of Delivery, Seller shall transfer the Product in the total amount ("Contract Quantity"), as follows:

Contract Quantity Table



3.5 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product. In the event Buyer re-sells all or a portion of the Contract Quantity of Product and any associated rights acquired under this Transaction ("Resold Product"), Seller agrees to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees 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, provided the foregoing shall not require Seller to enter into any agreements or transactions directly with any such subsequent purchaser. 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 to comply with the terms of this Transaction, and Seller would have had liability to Buyer under this Transaction for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation to the extent it would have been liable to Buyer had such Resold Product not been sold to a subsequent purchaser.

4. Payment

4.1 One-Time Payment

Buyer shall make a payment to Seller for the Product within ten (10) Business Days after the later of (a) Seller's performance and CAISO's email indicating successful transfer, or confirmation that such transfer is registered in the CIRA system, as described in Section 3.3 or (b) receipt of Seller's invoice. This payment is calculated as follows:

$$\text{Payment} = (A \times B \times C)$$

where:

A= Contract Price (in \$/kW-month)

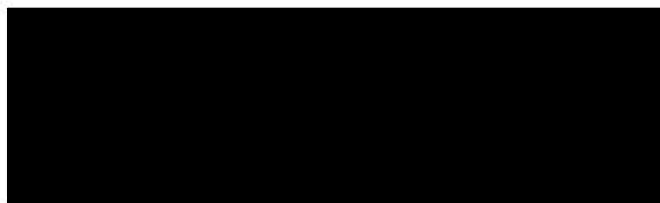
B= Contract Quantity (in MW) transferred by Seller

C= 1000kW/MW

The payment shall be rounded to two decimal places.

4.2 Contract Price

CONTRACT PRICE TABLE



5. Confidentiality

The Parties agree that Buyer and Seller may disclose this Agreement 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 applicable Governmental Body, CAISO, or SC to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the relevant terms of this Transaction 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. Buyer acknowledges that Seller is a public entity subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Buyer acknowledges that 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). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of this Agreement or any information designated as confidential by Seller ("Requested Confidential Information"), Buyer as soon practical shall notify Seller in writing that such request has been made. Parties agree that pricing information contained in the Confirmation is confidential information. Buyer agrees to redact such pricing information in any disclosure, in accordance with the statutory exemption for proprietary information in Section 6254.15 of the Act.

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. 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.

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 through a written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be executed by their authorized representative effective as of the Confirmation Effective Date.

SELLER

Constellation Energy Generation, LLC

By:  _____

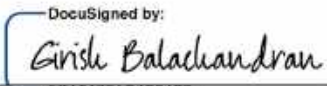
Name: Ravi S. Ganti

Sr. Vice President

Title: Portfolio Management & Analysis

BUYER

Silicon Valley Clean Energy Authority

By:  _____

Name: Girish Balachandran

Title: CEO

Approved as to form:

By: _____

Name: _____

Title: _____

Confirmation for Bilateral Import Capability Transfer

This confirmation letter ("Confirmation") confirms the transaction between **Silicon Valley Clean Energy Authority, a California joint powers authority** ("Buyer"), and **Constellation Energy Generation, LLC**, a Pennsylvania limited liability company ("Seller"), each individually a "Party" and together the "Parties", effective as of March 2, 2023 (the "Confirmation Effective Date") in which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product, as such term is defined in Section 3 of this Confirmation (the "Transaction"). This Transaction is governed by the EEI Master Power Purchase and Sale Agreement dated November 28, 2016 (the "Master Agreement"). The Master Agreement and this Confirmation including any applicable appendices, exhibits or amendments thereto, 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 below).

1. Definitions

- 1.1 "Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant to another, as described in the Tariff.
- 1.2 "CAISO" means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.3 "Confirmation" has the meaning specified in the introductory paragraph.
- 1.4 "Confirmation Effective Date" has the meaning specified in the introductory paragraph.
- 1.5 "Contract Price" has the meaning set forth in Section 4.2.
- 1.6 "Contract Quantity" has the meaning set forth in Section 3.4.
- 1.7 "CPUC" means the California Public Utilities Commission.
- 1.8 "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.
- 1.9 "Master Agreement" has the meaning specified in the introductory paragraph.
- 1.10 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.11 "Period of Delivery" means the months defined in Section 2.1, inclusive.
- 1.12 "Product" has the meaning specified in Section 3.1.
- 1.13 "Seller" has the meaning specified in the introductory paragraph.
- 1.14 "Tariff" means the tariff and protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.

1.15 "Transaction" has the meaning specified in the introductory paragraph.

2. Term

2.1 Period of Delivery

The "Period of Delivery" shall begin at the beginning of hour ending ("HE") 0100 on June 1, 2023 and continue until the end of HE 2400 on June 30, 2023.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

Seller shall transfer in the manner set forth in Section 3.3, to Buyer the Remaining Import Capability, as such term is defined by the Tariff (the "Product") in the Contract Quantity, for the Period of Delivery, and at the applicable Contract Price.

3.2 Delivery Point

Name	Bilateral Import Capability Transfer
CAISO BG/MSL Name	NOB_ITC

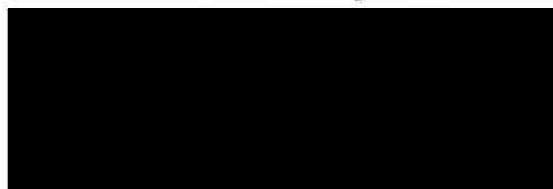
3.3 Performance

Within three (3) Business Days of the Confirmation Effective Date, Seller shall transfer to Buyer the Product in the amount of the Contract Quantity by registering the transfer with the CAISO as a Bilateral Import Transfer Capability as such terms is defined by the Tariff, and completing any other action of documentation required by the CAISO to effect such transfer, including registering such transfer in the CAISO Customer Interface for Resource Adequacy (CIRA) system. Upon Seller registering transfer with CAISO, Buyer shall immediately confirm the transfer with CAISO by e-mail or by confirming such transfer is registered in the CIRA system, and CAISO shall indicate successful transfer to Buyer and Seller by e-mail or by confirming such transfer is registered in the CIRA system within eleven (11) Business Days of the transfer request.

3.4 Contract Quantity

For the Period of Delivery, Seller shall transfer the Product in the total amount ("Contract Quantity"), as follows:

Contract Quantity Table

A large black rectangular box redacting the content of the Contract Quantity Table.

3.5 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product. In the event Buyer re-sells all or a portion of the Contract Quantity of Product and any associated rights acquired under this Transaction ("Resold Product"), Seller agrees to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees 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, provided the foregoing shall not require Seller to enter into any agreements or transactions directly with any such subsequent purchaser. 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 to comply with the terms of this Transaction, and Seller would have had liability to Buyer under this Transaction for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation to the extent it would have been liable to Buyer had such Resold Product not been sold to a subsequent purchaser.

4. Payment

4.1 One-Time Payment

Buyer shall make a payment to Seller for the Product within ten (10) Business Days after the later of (a) Seller's performance and CAISO's email indicating successful transfer, or confirmation that such transfer is registered in the CIRA system, as described in Section 3.3 or (b) receipt of Seller's invoice. This payment is calculated as follows:

$$\text{Payment} = (A \times B \times C)$$

where:

A= Contract Price (in \$/kW-month)

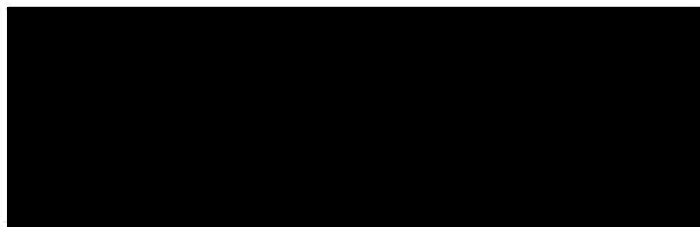
B= Contract Quantity (in MW) transferred by Seller

C= 1000kW/MW

The payment shall be rounded to two decimal places.

4.2 Contract Price

CONTRACT PRICE TABLE



5. Confidentiality

The Parties agree that Buyer and Seller may disclose this Agreement 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 applicable Governmental Body, CAISO, or SC to further disclose such information. Notwithstanding the foregoing, the Parties may disclose the relevant terms of this Transaction 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. Buyer acknowledges that Seller is a public entity subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Buyer acknowledges that 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). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of this Agreement or any information designated as confidential by Seller ("Requested Confidential Information"), Buyer as soon practical shall notify Seller in writing that such request has been made. Parties agree that pricing information contained in the Confirmation is confidential information. Buyer agrees to redact such pricing information in any disclosure, in accordance with the statutory exemption for proprietary information in Section 6254.15 of the Act.

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. 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.

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 through a written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be executed by their authorized representative effective as of the Confirmation Effective Date.

SELLER

Constellation Energy Generation, LLC

By: 

Name: Ravi S. Ganti

Title: Sr. Vice President
Portfolio Management & Analysis

BUYER

Silicon Valley Clean Energy Authority

By: 

Name: Girish Balachandran

Title: CEO

Approved as to form:

By: _____

Name: _____

Title: _____



Department of Energy
Bonneville Power Administration
Power Services
CONFIRMATION AGREEMENT

From: Bonneville Power Administration
 PO Box 3621
 Portland, OR 97208-3621

To: Silicon Valley Clean Energy Authority
 333 W. El Camino Real, Suite 290
 Sunnyvale, CA 94087

BPA Preschedule: [REDACTED]

BPA Real Time: [REDACTED]

BPA Contract: 23PM-16577

Trade Date: 02/17/2023

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 Authority, a California joint powers authority ("Buyer") (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 attached to this Confirmation Agreement. Transactions hereunder are in accordance with the Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services 22PM-16528 ("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: Silicon Valley Clean Energy Authority (SVCE)

Trader: [REDACTED]

Phone: [REDACTED]

Broker: None

Product: Surplus Firm (WSPP Schedule C)

Product Description: BPA ACS Energy, MCC Bucket Category 3

Seller: BPA

Trader: [REDACTED]

Phone: [REDACTED]

Holiday: NERC

Point of Delivery: (MALIN500_5_N101) (COB N-S)

Resource ID: BPA1_MALIN500_I_F_BPARA2

Deal Key:

Start Date	End Date	Hourly Contract Quantity	Energy Price \$/MWh	Delivery Hours	Contract Quantity (MWh)	Revenue/ Cost
------------	----------	--------------------------	---------------------	----------------	-------------------------	---------------

Start Date	End Date	Hourly Contract Quantity	Energy Price \$/MWh	Delivery Hours	Contract Quantity (MWh)	Revenue/ Cost
[REDACTED]						

I. Product Provisions

1. Definitions:

“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).

“CPUC” means the California Public Utilities Commission.

“Delivery Hours” means every Monday through Saturday, 16 consecutive hours that include HE 1700 through HE 2100 (including NERC holidays).

“Delivery Point” means the Point of Delivery (POD), (MALIN500_5_N101) (COB N-S).

“Delivery Term” means the period of time beginning on the Start Date and ending on the End Date.

“MCC Bucket(s)” means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031, as modified by CPUC Decision 21-06-029, 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, as modified by CPUC Decision 21-06-029). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

“MCC Bucket Category 3” means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) every Monday through Saturday, for 16 consecutive hours that include HE 1700 through 2100 (4 pm through 9 pm).

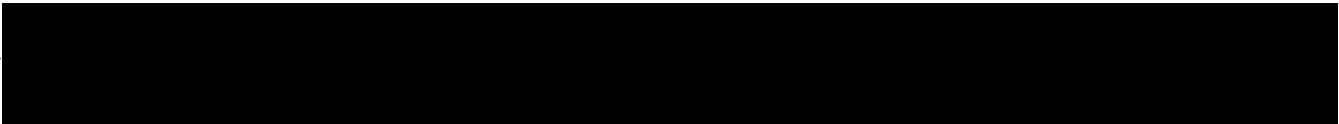
“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for Buyer by the CPUC pursuant to the RA Rules, or by any other governmental body having jurisdiction.

“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, D.19-10-021, D.20-06-028, 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, R.19-11-009, R.21-10-002 or by any applicable successor proceeding.

“System Resource” means a group of resources generated by the BPA ACS System 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 act as Buyer's CAISO scheduling coordinator (SC) to bid and deliver the Contract Quantity of Product to the CAISO and Buyer shall be entitled to all CAISO revenues associated with such deliveries (and if the CAISO LMP for the Delivery Point is negative during the Delivery Hours, Buyer shall be liable for any such payments), and all such amounts will be netted on Buyer's invoice. BPA shall receive no compensation for acting as scheduling coordinator under this Transaction. As Buyer's SC, BPA's bid will be consistent with the requirements of the RA Rules and any CAISO Tariff requirements.
- c. During the Delivery Term, Seller shall deliver the Product to Buyer in the amount of the Hourly Contract Quantity during each Delivery Hour 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 corresponding amounts shown on the e-Tags.
- d. Seller shall be the electricity importer into California for purposes of the Cap and Trade Regulations for the energy delivered pursuant to this Confirmation. The Parties acknowledge that BPA 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 Buyer any reporting obligations Buyer may have under the Cap and Trade Regulations.
- e. BPA shall ensure the e-tag qualifies as energy with an ACS Emissions Factor and lists the following:
- (i) ZES001 in the Carbon Copy Field of the tag.
 - (ii) "Silicon Valley Clean Energy" in the Comments Field of the tag.
 - (iii) Advanced notice to SVCE or its agent, if 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 1) and 2) above with information identifying the subsequent purchaser.
- f. 
- g. Energy delivered pursuant to this Confirmation Agreement will not be sourced from resources internal to the CAISO Balancing Authority Area.
- h. 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).
- i. 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.
- j. Throughout the Delivery Term, Product will be delivered to the Delivery Point using Firm Transmission.
- k. 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 real-time obligations.

- l. It is Buyer's sole responsibility to ensure it has obtained sufficient intertie import capability at the Delivery Point.
- m. 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 Buyer 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. Buyer 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.

3. **Representations:**

- 3.1 BPA and Buyer 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 Buyer's (or a subsequent purchaser's) right to the use of the Contract Quantity for the sole benefit of Buyer's RAR (or subsequent purchaser'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 Delivery Hours of the Delivery Term required for full RAR eligibility to Buyer, (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 Buyer's (or subsequent purchaser'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 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. Buyer or subsequent purchaser has the exclusive right to count the Contract Quantity of Product from BPA's System Resource toward Buyer's RAR (or subsequent purchaser's RAR);
 - c. The Delivery Point is firm and may not be modified without the consent of Buyer (i.e., the Delivery Point is not Seller's choice);
 - d. 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 committed or sold by BPA to any third party in order to satisfy its RAR or analogous capacity obligations in other markets or balancing authority areas;

- e. Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission (“FERC”), and RA Rules approved by the CPUC as they apply to the Product; and
- f. Title and reporting rights to the Product shall pass from Seller to Buyer at the Delivery Point.

4. **Indemnity Against Penalties and Replacement:** If BPA fails to fulfill its obligations under this Confirmation Agreement to provide the Product, and such failure is not excused under this Confirmation Agreement or the Enabling Agreement, in addition to any damages BPA would owe Buyer pursuant to Section 21.3 of the WSPP Agreement, then BPA agrees to indemnify Buyer for:

- a. any monetary penalties assessed by the CPUC and/or the CAISO against Buyer for Buyer’s failure to meet the requirements of the RA Rules or Tariff as a result of BPA not fulfilling any of its obligations under this Confirmation Agreement. Such failure may be excused to the extent BPA provides Buyer with sufficient notice to take action necessary to avoid such monetary penalties being assessed.
- b. if BPA fails to bid the Product into the CAISO day-ahead and real-time markets in accordance with this Confirmation Agreement, BPA will refund to Buyer any payments made by Buyer for Product that is not bid according to this Confirmation Agreement, provided these payments are not already included in the damages calculated pursuant to Section 21.3 of the WSPP Agreement.

Notwithstanding the foregoing, if approved by the CPUC and/or the CAISO, BPA may replace any Product necessary for Buyer to make its equivalent RA demonstration with another System Resource.

5. **Resale of Product:**

- a. Buyer 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 Buyer 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 Buyer’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 Buyer for any damages due to the failure of BPA to comply with the terms of this transaction; However, Buyer represents and warrants that BPA shall have no contractual obligation or liability to any subsequent purchaser.
- b. BPA’s obligations under this Section 5 are contingent on Buyer 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 Buyer 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, Buyer 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,
- ii. Volume (in MW) of Resold Product,
- iii. Sale delivery period for Resold Product.

II. Additional Provisions

1. **Confidentiality:** Each Party recognizes that this Confirmation Agreement is subject to the requirements of the California Public Records Act (California Government Code § 7920 *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 Buyer, 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.
2. **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.
3. **Joint Powers Authority:** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code § 6500 *et seq.*) and is a local agency separate from its constituent members. Buyer will be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation Agreement. BPA agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer’s members, any cities or counties participating in Buyer’s community choice aggregation program, or any of Buyer’s retail customers in connection with the Transaction to which this Confirmation applies.
4. **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.
5. **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 Buyer 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

Buyer under this Confirmation Agreement shall continue in months during which such capacity and/or energy is not needed, as determined by BPA, in the Pacific Northwest.

6. **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.



AGREED AND ACCEPTED

Bonneville Power Administration

MARK
MILLER

Digitally signed by MARK
MILLER
Date: 2023.03.22
12:37:50 -0700

Print Name: Mark E. Miller
Title: Account Executive
Date: 3/22/23

Silicon Valley Clean Energy Authority

DocuSigned by:
Girish Balachandran
GIRISH BALACHANDRAN

Print Name: Girish Balachandran
Title: CEO
Date: 3/23/2023

EXHIBIT C-SS SPECIFIED SOURCE CONFIRMATION ATTACHMENT

a. Identity of Source:
The following (i) facility, generator, unit or (ii) ACS system ("Source"): 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 2023 ACS Emission Factor posted on the California Air Resources Board website. https://ww2.arb.ca.gov/mrr-acs
c. Carbon Adjustment (rapid settlement if Seller delivers higher emissions factor energy than agreed): Carbon Adjustment <u>applies unless</u> the following box is checked:
<input type="checkbox"/> 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: <i>[e.g., fixed damages of \$0, \$2, or % of Carbon Adjustment.]</i>
d. EF True-Up (full indemnity for difference between agreed and CARB-assigned emissions factors, settled after verification): EF True-Up <u>does not apply unless</u> 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: <i>[e.g., caps]</i>
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 <u>not</u> Regulation Incorporation <u>unless</u> the following box is checked:
<input type="checkbox"/> This transaction is Regulation Incorporation and Section 6.e applies.
g. Additional provisions:



Department of Energy
Bonneville Power Administration
Power Services
CONFIRMATION AGREEMENT

From: Bonneville Power Administration
 PO Box 3621
 Portland, OR 97208-3621

To: Silicon Valley Clean Energy Authority
 333 W. El Camino Real, Suite 290
 Sunnyvale, CA 94087

BPA Preschedule: [REDACTED]

BPA Real Time: [REDACTED]

BPA Contract: 23PM-16569

Trade Date: 02/17/2023

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 Authority, a California joint powers authority ("Buyer") (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 attached to this Confirmation Agreement. Transactions hereunder are in accordance with the Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services 22PM-16528 ("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: Silicon Valley Clean Energy Authority (SVCE)

Trader: [REDACTED]

Phone: [REDACTED]

Broker: None

Product: Surplus Firm (WSPP Schedule C)

Product Description: BPA ACS Energy, MCC Bucket Category 3

Seller: BPA

Trader: [REDACTED]

Phone: [REDACTED]

Holiday: NERC

Point of Delivery: Sylmar (SYLMARDC_2_N501) (NOB N-S)

Resource ID: BPA1_NOB_I_F_BPARA

Deal Key:

Start Date	End Date	Hourly Contract Quantity	Energy Price \$/MWh	Delivery Hours	Contract Quantity (MWh)	Revenue/ Cost
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Start Date	End Date	Hourly Contract Quantity	Energy Price \$/MWh	Delivery Hours	Contract Quantity (MWh)	Revenue/ Cost
[REDACTED]						

I. Product Provisions

1. Definitions:

“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).

“CPUC” means the California Public Utilities Commission.

“Delivery Hours” means every Monday through Saturday, 16 consecutive hours that include HE 1700 through HE 2100 (including NERC holidays).

“Delivery Point” means the Point of Delivery (POD), Sylmar (SYLMARDC_2_N501) (NOB N-S).

“Delivery Term” means the period of time beginning on the Start Date and ending on the End Date.

“MCC Bucket(s)” means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031, as modified by CPUC Decision 21-06-029, 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, as modified by CPUC Decision 21-06-029). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

“MCC Bucket Category 3” means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) every Monday through Saturday, for 16 consecutive hours that include HE 1700 through 2100 (4 pm through 9 pm).

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for Buyer by the CPUC pursuant to the RA Rules, or by any other governmental body having jurisdiction.

“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, D.19-10-021, D.20-06-028, 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, R.19-11-009, R.21-10-002 or by any applicable successor proceeding.

“System Resource” means a group of resources generated by the BPA ACS System 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 act as Buyer's CAISO scheduling coordinator (SC) to bid and deliver the Contract Quantity of Product to the CAISO and Buyer shall be entitled to all CAISO revenues associated with such deliveries (and if the CAISO LMP for the Delivery Point is negative during the Delivery Hours, Buyer shall be liable for any such payments), and all such amounts will be netted on Buyer's invoice. BPA shall receive no compensation for acting as scheduling coordinator under this Transaction. As Buyer's SC, BPA's bid will be consistent with the requirements of the RA Rules and any CAISO Tariff requirements.
- c. During the Delivery Term, Seller shall deliver the Product to Buyer in the amount of the Hourly Contract Quantity during each Delivery Hour 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 corresponding amounts shown on the e-Tags.
- d. Seller shall be the electricity importer into California for purposes of the Cap and Trade Regulations for the energy delivered pursuant to this Confirmation. The Parties acknowledge that BPA 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 Buyer any reporting obligations Buyer may have under the Cap and Trade Regulations.
- e. BPA shall ensure the e-tag qualifies as energy with an ACS Emissions Factor and lists the following:
 - (i) ZES001 in the Carbon Copy Field of the tag.
 - (ii) "Silicon Valley Clean Energy" in the Comments Field of the tag.
 - (iii) Advanced notice to SVCE or its agent, if 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 1) and 2) above with information identifying the subsequent purchaser.

- g. Energy delivered pursuant to this Confirmation Agreement will not be sourced from resources internal to the CAISO Balancing Authority Area.
- h. 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).
- i. 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.
- j. Throughout the Delivery Term, Product will be delivered to the Delivery Point using Firm Transmission.
- k. 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 real-time obligations.

- l. It is Buyer's sole responsibility to ensure it has obtained sufficient intertie import capability at the Delivery Point.
- m. 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 Buyer 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. Buyer 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.

3. **Representations:**

- 3.1 BPA and Buyer 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 Buyer's (or a subsequent purchaser's) right to the use of the Contract Quantity for the sole benefit of Buyer's RAR (or subsequent purchaser'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 Delivery Hours of the Delivery Term required for full RAR eligibility to Buyer, (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 Buyer's (or subsequent purchaser'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 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. Buyer or subsequent purchaser has the exclusive right to count the Contract Quantity of Product from BPA's System Resource toward Buyer's RAR (or subsequent purchaser's RAR);
 - c. The Delivery Point is firm and may not be modified without the consent of Buyer (i.e., the Delivery Point is not Seller's choice);
 - d. 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 committed or sold by BPA to any third party in order to satisfy its RAR or analogous capacity obligations in other markets or balancing authority areas;

- e. Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and RA Rules approved by the CPUC as they apply to the Product; and
- f. Title and reporting rights to the Product shall pass from Seller to Buyer at the Delivery Point.

4. **Indemnity Against Penalties and Replacement:** If BPA fails to fulfill its obligations under this Confirmation Agreement to provide the Product, and such failure is not excused under this Confirmation Agreement or the Enabling Agreement, in addition to any damages BPA would owe Buyer pursuant to Section 21.3 of the WSPP Agreement, then BPA agrees to indemnify Buyer for:

- a. any monetary penalties assessed by the CPUC and/or the CAISO against Buyer for Buyer's failure to meet the requirements of the RA Rules or Tariff as a result of BPA not fulfilling any of its obligations under this Confirmation Agreement. Such failure may be excused to the extent BPA provides Buyer with sufficient notice to take action necessary to avoid such monetary penalties being assessed.
- b. if BPA fails to bid the Product into the CAISO day-ahead and real-time markets in accordance with this Confirmation Agreement, BPA will refund to Buyer any payments made by Buyer for Product that is not bid according to this Confirmation Agreement, provided these payments are not already included in the damages calculated pursuant to Section 21.3 of the WSPP Agreement.

Notwithstanding the foregoing, if approved by the CPUC and/or the CAISO, BPA may replace any Product necessary for Buyer to make its equivalent RA demonstration with another System Resource.

5. **Resale of Product:**

- a. Buyer 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 Buyer 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 Buyer'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 Buyer for any damages due to the failure of BPA to comply with the terms of this transaction; However, Buyer represents and warrants that BPA shall have no contractual obligation or liability to any subsequent purchaser.
- b. BPA's obligations under this Section 5 are contingent on Buyer 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 Buyer 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, Buyer 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:

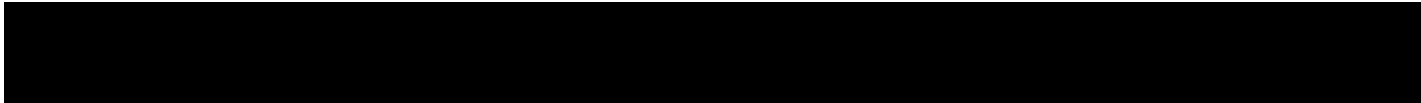
- i. Benefitting load serving entity SC identification number,
- ii. Volume (in MW) of Resold Product,
- iii. Sale delivery period for Resold Product.

II. Additional Provisions

1. **Confidentiality:** Each Party recognizes that this Confirmation Agreement is subject to the requirements of the California Public Records Act (California Government Code § 7920 *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 Buyer, 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.
2. **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.
3. **Joint Powers Authority:** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code § 6500 *et seq.*) and is a local agency separate from its constituent members. Buyer will be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation Agreement. BPA agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer’s members, any cities or counties participating in Buyer’s community choice aggregation program, or any of Buyer’s retail customers in connection with the Transaction to which this Confirmation applies.
4. **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.
5. **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 Buyer 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

Buyer under this Confirmation Agreement shall continue in months during which such capacity and/or energy is not needed, as determined by BPA, in the Pacific Northwest.

6. **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.



AGREED AND ACCEPTED

Bonneville Power Administration

MARK
MILLER

Digitally signed by MARK
MILLER
Date: 2023.03.22
12:35:49 -0700

Print Name: Mark E. Miller
Title: Account Executive
Date: 3/22/23

Silicon Valley Clean Energy Authority

DocuSigned by:
Girish Balachandran
5C484B9AC4C24C43

Print Name: Girish Balachandran
Title: CEO
Date: 3/23/2023

EXHIBIT C-SS SPECIFIED SOURCE CONFIRMATION ATTACHMENT

a. Identity of Source:
The following (i) facility, generator, unit or (ii) ACS system ("Source"): 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 2023 ACS Emission Factor posted on the California Air Resources Board website. https://ww2.arb.ca.gov/mrr-acs
c. Carbon Adjustment (rapid settlement if Seller delivers higher emissions factor energy than agreed): Carbon Adjustment <u>applies unless</u> the following box is checked:
<input type="checkbox"/> 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: <i>[e.g., fixed damages of \$0, \$2, or % of Carbon Adjustment.]</i>
d. EF True-Up (full indemnity for difference between agreed and CARB-assigned emissions factors, settled after verification): EF True-Up <u>does not apply unless</u> 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: <i>[e.g., caps]</i>
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 <u>not</u> Regulation Incorporation <u>unless</u> the following box is checked:
<input type="checkbox"/> This transaction is Regulation Incorporation and Section 6.e applies.
g. Additional provisions:

CONFIRMATION

Reference:

EEI Master Power Purchase and Sale Agreement
Between Calpine Energy Services, L.P. ("Seller")

and

Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer")
dated March 9, 2018 ("Master Agreement")

Transaction Date: 3/23/2023(the "Effective Date")

RECITALS:

WHEREAS, Buyer is a California joint powers authority;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.** Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

"Applicable Law" means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

"California RPS" or "California Renewables Portfolio Standard" means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission ("CPUC") as set forth in CPUC Decision ("D") 08-08-028, D.08-04-009, D.11-01-026, D.11-12-020, D.11-12-052, D.12-06-038, D.14-12-023, D.16-12-040, and D.17-06-026 and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

"CEC" means the California Energy Commission or its successor agency.

"Change in Law" has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“CPUC” means the California Public Utilities Commission or its successor agency. “Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Exhibit(s)” shall be that certain Exhibit A, which is attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Inter-SC Trade” or “IST” has the meaning set forth in the Tariff.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PCC1 Renewable Energy” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code and CPUC Decision 11-12-052, as applicable to the REC Vintage transferred hereunder.

“Product” has the meaning set forth in Section 2.1 hereof.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law(s), the requirements of

insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practices shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource.

“Renewable Energy Contract Price” shall mean the price (\$/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit A.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit A.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder, and as may be amended from time to time or as further defined or supplemented by Law.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification of the power source.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. PRODUCT

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, PCC1 Renewable Energy (the “Product”) in the quantity specified in Section 7.1.

2.2 Change in Law. If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective

Date that results in material changes to Buyer's or Seller's obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer's compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within sixty (60) days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below.

2.3 RPS Standard Terms and Conditions.

STC 6: Eligibility

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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 REC-1: Transfer of Renewable Energy Credits

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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-2: Tracking of RECs in WREGIS

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 this contract.

STC 17: Applicable Law

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

- 2.4 Resources. For Renewable Energy delivered under this Confirmation, Seller shall use Specified Sources of Power, as further detailed in Exhibit A; provided however, Seller may designate additional Specified Sources of Power upon 5 (five) days prior written notice to Buyer thereof; provided further any such additional Specified Sources of Power shall meet the requirements for the applicable Product as defined herein. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.
- 2.5 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer's sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the applicable California RPS requirements or WREGIS specifications reflected in this

Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage (i.e. with WREGIS Certificates produced within the same calendar year) and that meet the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation.

Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its applicable reports to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

- 2.6 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations ("CCR") Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs for compliance purchased from Seller hereunder no later than four months after the year in which they are produced for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D) and to provide Seller with the WREGIS retirement report.

2.7 Additional Terms and Conditions

Seller Representations and Warranties: Seller represents and warrants:

- (a) Seller has not sold the Product or any attributes of the Product to be transferred to Buyer to any other person or entity;
- (b) For the sale of Renewable Energy, Seller receives compensation directly from the CAISO for energy imported or scheduled to the CAISO in real-time on Buyer's behalf
- (c) For the sale of PCC1 Renewable Energy, each Project either:
 - (i) has a first point of interconnection with a California balancing authority; or
 - (i) has its first point of interconnection with distribution facilities used to serve end users within a California balancing authority area; or
 - (ii) the generation from the Project is scheduled into a California balancing authority without substituting electricity from any

other source, provided that, if another source provides real-time ancillary services required to maintain an hourly or sub-hourly import schedule into the California balancing authority only the fraction of the schedule actually generated by the Project from which the electricity is procured may count toward this Product; or

- (iii) the generation from the Project is scheduled into a California balancing authority pursuant to a dynamic transfer agreement between the balancing authority where the Project is located and the California balancing authority into which the generation is scheduled.
- (d) For the sale of PCC1 Renewable Energy, Seller has not sold the RECs originally associated with the Product to any other person or entity.
- (e) For the sale of PCC1 Renewable Energy, Seller receives compensation directly from the CAISO for energy imported or scheduled to the CAISO in real-time on Buyer's behalf.
- (f) If and to the extent that the PCC1 Renewable Energy Product sold by Seller is a resale of part or all of a contract between Seller and one or more third parties, Seller represents, warrants and covenants that the resale complies with the following conditions in (i) through (v) below as of the Effective Date and throughout the generation period:
 - (i) The upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1);
 - (ii) The upstream third party contract(s) and this Agreement transfers only electricity and RECs that have not yet been generated prior to the commencement of the generation period;
 - (iii) The electricity transferred by this Agreement is transferred to Buyer in real time;
 - (iv) If the Product is scheduled from a Project that is not interconnected to a California balancing authority into a California balancing authority without substituting electricity from another source, the original hourly or sub-hourly schedule is maintained, and the three preceding conditions are met; and
 - (v) If the Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under the upstream third party

contract(s) and this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

Start Date:	End Date:
4/01/2023	12/31/2023

4. **DELIVERY POINT.**

Product	Delivery Point
Renewable Energy	CAISO

5. **SCHEDULING.** Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. The Renewable Energy will be scheduled to the applicable delivery point without (an) IST.

6. **PRICING.**

- 6.1 **Renewable Energy Contract Price, Invoice and Payment.** For each month during the Delivery Period, Seller will invoice Buyer (“Invoice”) for an amount equal to: the applicable Renewable Energy Contract Price as specified in Exhibit A multiplied by the portion of the Renewable Energy Contract Quantity delivered to Buyer (the “Invoice Amount”), as evidenced by quantity of WREGIS certificates in Seller’s WREGIS account that are available for transfer to Buyer. Within ten (10) days of receipt of payment, Seller shall transfer through WREGIS to Buyer’s WREGIS account, the quantity of Renewable Energy Credits equal to the Invoice Amount.

7. **CONTRACT QUANTITIES.**

- 7.1 **Renewable Energy.** Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A. The Renewable Energy sold by Seller to Buyer shall also include all Renewable Energy Credits associated with such Renewable Energy. By each October 1st during the Delivery Period, Seller shall provide a forecasted delivery amount in MWh (“Updated Forecast”) that is between the minimum and maximum

quantities set forth for the applicable calendar year in Exhibit A. Seller shall deliver +/- 2.5% of the Updated Forecast amount for the applicable calendar year.

8. MONTHLY BILLING SETTLEMENT.

8.1 Specified Source of Power. Seller shall deliver the Specified Source of Power associated with the Renewable Energy to the CAISO at the Delivery Point and shall be entitled to retain all CAISO revenues associated with such delivery.

8.2 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the tenth (10th) day of the month for RECs that have been transferred to Buyer through WREGIS. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the later of the twenty-third (23rd) day of the month in which Seller delivered such invoice, or the tenth (10th) day after receipt of invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day.

9. COMPLIANCE REPORTING. Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

10. NO RESTRICTION. Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or prevent Buyer from purchasing Energy from other parties or prevent Seller from selling Energy to other parties; provided, however, that Buyer shall remain responsible to pay Seller for the Contract Quantities represented in Exhibit A.

11. STANDARD OF CARE AND GOOD FAITH. When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Industry Practices.

12. SECURITY PROVISION.

This Confirmation is being provided pursuant to and in accordance with the EEI Master Power Purchase and Sale Agreement dated February 28, 2020 (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

This Confirmation is subject to Exhibit A identified below and that is attached hereto:

Exhibit A – Renewable Energy Contract Quantity and Price Schedule and Specified Sources

CALPINE ENERGY SERVICES, L.P.

DS
RA

Sign: _____

DocuSigned by:
Jason Armenta
96A7E6031AFC42C...

Print: _____

Title: _____ Vice President

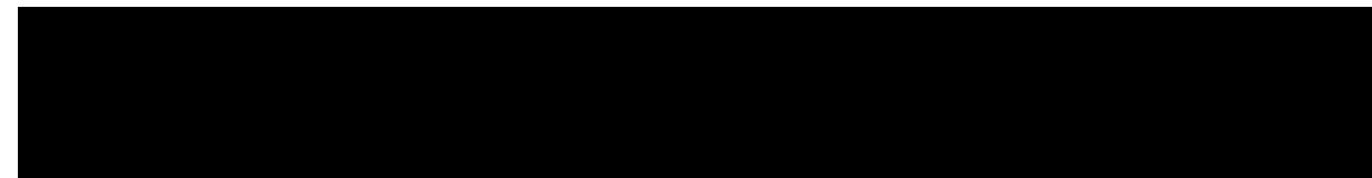
**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

Sign: _____

DocuSigned by:
Monica Padilla
573FC104110B4C0...

Print: _____

Title: _____ COO & Director of Power Resources

Exhibit A**Specified Sources of PCC1 Renewable Energy**

Name of Facility	Delivery Point	CEC RPS ID	Delivery Period	Host Balancing Authority
Aidlin Power Plant	POD_ADLIN_1_UNITS-APND	60115A	Full Delivery Term	CAISO
Sonoma Power Plant	POD_SMUDGO_7_UNIT 1- APND	60010A	Full Delivery Term	CAISO
Geysers Units 5&6	POD_GYS5X6_7_UNITS-APND	60002A	Full Delivery Term	CAISO
Geysers Units 7&8	POD_GYS7X8_7_UNITS-APND	60003A	Full Delivery Term	CAISO
Geysers Unit 11	POD_GEYS11_7_UNIT11- APND	60025A	Full Delivery Term	CAISO
Geysers Unit 12	POD_GEYS12_7_UNIT12- APND	60004A	Full Delivery Term	CAISO
Geysers Unit 13	POD_GEYS13_7_UNIT13- APND	60005A	Full Delivery Term	CAISO
Geysers Unit 14	POD_GEYS14_7_UNIT14- APND	60026A	Full Delivery Term	CAISO
Geysers Unit 16	POD_GEYS16_7_UNIT16- APND	60006A	Full Delivery Term	CAISO
Geysers Unit 17	POD_GEYS17_7_UNIT17- APND	60007A	Full Delivery Term	CAISO
Geysers Unit 18	POD_GEYS18_7_UNIT18- APND	60008A	Full Delivery Term	CAISO
Calistoga Power Plant	POD_SANTFG_7_UNITS-APND	60117A	Full Delivery Term	CAISO
Geysers Unit 20	POD_GEYS20_7_UNIT20- APND	60009A	Full Delivery Term	CAISO
RE Slat 1 LLC – Stanford Phase	POD_SLATE_7_N004-APND	64917A	Full Delivery Term	CAISO
Rosamond I - West Solar - Solar Star California XLI, LLC	POD_SGSAVF1_7_N00-APND	60855A	Full Delivery Term	CAISO