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George Tyson, Chair
Town of Los Altos Hills

AGENDA PACKET MATERIALS AMENDMENTS SUMMARY

Tina Walia, Vice Chair
City of Saratoga

6/12/23

1. Item 2: Additional staff member added to Staff Updates of the CEO Report

Elliot Scozzola
City of Campbell

Sheila Mohan
City of Cupertino

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



George Tyson, Chair
Town of Los Altos Hills

Tina Walla, Vice Chair
City of Saratoga

Elliot Scozzola
City of Campbell

Sheila Mohan
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City of Mountain View

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara

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

Wednesday, June 14, 2023
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

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

Teleconference Meeting
Webinar:

<https://cityofcupertino.zoom.us/j/99415287117>

Telephone (Audio Only):
US: +1 669-900-6833
Webinar ID: 994 1528 7117

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, 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.

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333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

AGENDA

George Tyson, Chair
Town of Los Altos Hills

Call to Order

Tina Walia, Vice Chair
City of Saratoga

Roll Call

Elliot Scozzola
City of Campbell

Public Comment on Matters Not Listed on the Agenda

Sheila Mohan
City of Cupertino

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.

Zach Hilton
City of Gilroy

Sally Meadows
City of Los Altos

Consent Calendar (Action)

Rob Rennie
Town of Los Gatos

1a) Approve Minutes of the May 10, 2023, Board of Directors Meeting

1b) Receive April 2023 Treasurer Report

Evelyn Chua
City of Milpitas

1c) Approve Additional Funding of \$250,000 for eHub Resources for a Not to Exceed Amount of \$1.1M

Bryan Mekechuk
City of Monte Sereno

1d) Authorize the Chief Executive Officer to Execute a Three-Year Agreement with the Sacramento Municipal Utility District (SMUD) for Electrification Concierge Consultant Services

Yvonne Martinez Beltran
City of Morgan Hill

1e) Authorize the Chief Executive Officer to Execute an Amendment to the Agreement with CLEAResult Consulting, Inc. for Electric Vehicle Charging Technical Assistance to Extend the Term of the Agreement for 15 months and Increase Compensation by \$225,000

Margaret Abe-Koga
City of Mountain View

1f) Adopt a Resolution Authorizing the Chief Executive Officer to Execute Master Agreement with Citadel Energy Marketing LLC

Larry Klein
City of Sunnyvale

1g) Adopt a Resolution Authorizing the Chief Executive Officer to Execute a Sole Source Contract with the San Jose Conservation Corps to Build the SVCE All-Electric Demonstration Home

Otto Lee
County of Santa Clara

1h) Authorize the Chief Executive Officer to Execute an Amendment to the 2022-2023 Climate Corps Fellowship Agreement with Strategic Energy Innovations

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1i) Authorize the Chief Executive Officer to Execute Amendment to Agreement with PFM Asset Management for Investment Advisory Services to Allow SVCE to Enter into an Agreement with US Bank for Custodial Bank Services

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1j) Executive Committee Report

George Tyson, Chair
Town of Los Altos Hills

Tina Walia, Vice Chair
City of Saratoga

Elliot Scozzola
City of Campbell

Sheila Mohan
City of Cupertino

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

1k) Finance and Administration Committee Report

1l) California Community Power Report

1m) Additional Committee Reports

Regular Calendar

2) CEO Report (Discussion)

3) SVCE Strategic Plan FY 24 Update (Discussion)

4) Results of Stress Test Analyses for FY2024-FY2028 Planning Horizon
(Discussion)

5) FY 2023-24 Budget Framework (Discussion)

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

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Chief Executive Officer

PUBLIC EMPLOYEE APPOINTMENT

Title: Chief Executive Officer

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: Director Tyson, Board Chair, and Director Walia, Board Vice Chair

Unrepresented employee: Chief Executive Officer

Report from Closed Session

Adjourn

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333 W El Camino Real
Suite 330
Sunnyvale, CA 94087



Silicon Valley Clean Energy Authority

Board of Directors Meeting

Wednesday, May 10, 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 meeting to order at 7:00 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
Bryan Mekechuk, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill (Arrived at 7:01 p.m. and participated via teleconference)
Margaret Abe-Koga, Mountain View (Arrived at 7:19 p.m.)
Larry Klein, Sunnyvale

Absent:

Evelyn Chua, Milpitas
Otto Lee, Santa Clara County

Public Comment on Matters Not Listed on the Agenda

Colin Corbett, SVCE customer, shared his experience installing an electric water heater and applying for a rebate from SVCE.

A presentation was submitted to the Board of Directors and projected during Mr. Corbett's public comment, which is attached to the Meeting Minutes as Attachment A.

Director Mekechuk inquired if Mr. Corbett had applied for a certification rebate on the testing side; Mr. Corbett responded that he was unaware of such rebate. Director Mekechuk noted he would follow up with Mr. Corbett.

Chair Tyson thanked Mr. Corbett for his comment; CEO Balachandran provided brief comments and noted staff has offered to meet with Mr. Corbett to discuss his experience and to help fine-tune the heat pump water heater rebate program.

Justin Zagunis, Director of Decarbonization Programs and Policy, addressed the Board of Directors and Mr. Corbett. Director of Decarbonization Programs and Policy Zagunis noted feedback on programs is appreciated and staff would continue to think about how to improve the process and customer experience.

Bruce Karney addressed Mr. Corbett's situation and commented he's been told it is not anticipated that someone would have a permit before a water heater has been replaced because they are almost always emergency replacements. Mr. Karney encouraged the board and staff to develop a policy giving three months from the time of the installation of the heat pump water heater until the rebate paperwork is filed, and shared he hopes the board will work with staff to create a policy that can be applied retroactively in Mr. Corbett's case and other similar 2023 cases.

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 April 12, 2023, Board of Directors Meeting
- 1b) Receive March 2023 Treasurer Report
- 1c) Authorize the Chief Executive Officer to Approve the Agreement with Strategic Energy Innovations to Host Three Climate Corps Fellows for the 2023-2024 Fellowship Cycle
- 1d) Adopt Resolution Approving Amendment to Operating Rules and Regulations to Expand Executive Committee Membership to Up to Six Members
- 1e) Authorize Request for Extension to Comply with Load Management Standards
- 1f) Receive SVCE Rate Schedules Effective May 1, 2023
- 1g) Adopt Resolution Moving Reinstatement of SVCE's Delinquent Payment Policy to May 2023
- 1h) Authorize the Chief Executive Officer to Execute an Amendment to the Agreement with Enverve Corporation to Extend the Term of the Agreement for 15.5 Months and Increase Compensation by \$175,500
- 1i) Executive Committee Report
- 1j) California Community Power Report
- 1k) Additional Committee Reports

MOTION: Vice Chair Walia moved and Director Meadows seconded the motion to approve the Consent Calendar, Items 1a through 1k.

The motion carried by verbal roll call vote with Directors Abe-Koga, Chua, and Lee absent.

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran's report included the following:

- 1) Introduction of two new SVCE employees:
Jesse Park, Power Data Analyst, and
Eric Scheier, Senior Power Analyst

Both provided brief welcome comments.

- 2) An update on the anticipated timeline for SVCE's FY24 budget, FY24 Strategic Focus Areas, and CEO evaluation;
- 3) Information from Zoe Elizabeth, Deputy Director of Decarbonization Programs and Policy, who shared a slide regarding the Ninth Circuit's decision on the Berkeley gas ban and responded to board member questions;
- 4) Information from Bena Chang, Senior Government Affairs Manager, who shared a slide and key provisions regarding the Governor's Budget Trailer Bill proposal and AB 1373; and
- 5) Invitations to the following upcoming events:
CalCCA's Annual Conference, May 17-19th in San Diego, CA, and
The Caso Diablo IV project ribbon cutting event June 9th in Mammoth Lakes, CA.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment.

3) Appoint Sixth Member to SVCE's 2023 Executive Committee (Action)

Andrea Pizano, Board Clerk and Executive Assistant, introduced the item.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment.

Director Klein expressed interest in joining the 2023 Executive Committee.

MOTION: Director Mekechuk moved and Director Martinez Beltran seconded the motion to appoint Director Larry Klein as the sixth member of the 2023 Executive Committee to hold office until the term ends in 2024.

Director Klein shared his appreciation for the motion and provided brief comments on his interest in participating in the Executive Committee.

The motion carried by verbal roll call vote with Director Chua and Lee absent.

4) Update on FY 2022-2023 Digital Engagement Initiatives (Information)

Pamela Leonard, Senior Manager of Communications, and Leslie Madarang, Marketing Specialist, presented an update on digital engagement and customer awareness. Presentation highlights included key digital engagement goals and metrics, and new features on the award winning eHub.

Staff responded to questions from board members regarding future plans for digital engagement and growth for the GridShift program, differentiation between unique users and returning users, customers using eHub to purchase directly versus rebate participation, and a suggestion to use referral codes for purchases to track where sales may be coming from.

Chair Tyson opened Public Comment.

Bruce Karney commented on a TED Talk by Steve Schmidt, Los Altos resident and former SVCE Alternate Director, on reducing his carbon footprint from 39 tons to 1 ton. Mr. Karney suggested eHub include a carbon calculator to allow visitors to identify what their carbon footprint is and how it compares to the average American or Northern Californian. Karney noted a simple calculator on eHub would do a good job at helping people understand if they are in the top 10% of polluters or top 10% of climate champions.

Chair Tyson closed Public Comment.

Board Member Announcements and Future Agenda Items

Director Abe-Koga announced the Santa Clara County Cities Association will be hosting an annual dinner on June 15, 2023, with a sustainability theme, at 6pm at the Los Altos Community Center.

Public Comment on Closed Session

No speakers.

The Board of Directors convened to Closed Session at 8:00 p.m.

Closed Session

Public Employee Performance Evaluation

Title: Chief Executive Officer

Conference with Labor Negotiators

Agency Representatives: George Tyson, Chair, Board of Directors,

Tina Walia, Vice Chair, Board of Directors

Unrepresented Employee: Chief Executive Officer

Conference with Legal Counsel – Anticipated Litigation

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

The Board of Directors reconvened from Closed Session at 8:57 p.m.

Report from Closed Session

Chair Tyson announced there was nothing to report from Closed Session.

Adjourn

Chair Tyson adjourned the meeting at 8:57 p.m.

ATTACHMENT A

Public Comment from Colin Corbett

ATTEST:

Andrea Pizano, Board Secretary

Electric water heater install A Customer experience

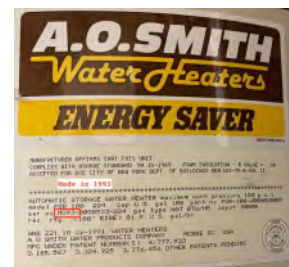
Colin Corbett
Reservation # **HB-0210**

Dear SVCE members of the board.

I come to you as someone who has tried to actually get a rebate from SVCE and thought I would give you the perspective of someone in the trenches.

Background

- Recently closed on a house.
- Realized 100 Gal water heater was 30 years old (1993)
- Decided to replace with 80 Gal Electric
- New water heater was installed by 3/29.
- Reimbursement was denied, because I didn't file paperwork first.



I recently closed on a house and took possession of it on 3/1.

We had home inspections, but they missed that the existing water heater, was 30 years old.

It wasn't in great shape, had leaks, corrosion, no drainpan, and other issues.

We decided to replace it, and we had a new water heater installed by the end of the month.

Now, I will admit, that I was not fully aware of SVCE and their rebate programs. My first priority was to get a critical issue at my house fixed fast, while also taking advantage of going green.

When I did submit the paperwork, my reimbursement was denied, as I had not followed the SVCE process.

Timeline

- 3/2 – water heater realized as 30 years old
- 3/14 – first quote received
- 3/14 – second quote received
- 3/15 – contract signed.
- 3/23 – permit pulled
- 3/29 – work done
- 3/30 – SVCE information sent to me by plumber
- 4/1 – rebate application submitted.
- 4/3 – rebate application approved
- 4/3 – permit closed.
- 4/3 – invoice paid
- 4/3 – rebate paperwork submitted
- 4/13 – rebate DENIED – Incorrect set of steps followed



Now,

Here is the exact timeline.

I signed the permit on 3/15.... After I had received 2 quotes.

The permit was pulled and the work was done.

I then received the SVCE paperwork.

And submitted it a couple days later.

The rebate application was approved.

On the same day, the permit was closed,

The invoice was paid, and the rebate paperwork was submitted.

On 4/13 the rebate was denied, as I had done this incorrectly, in the wrong set of steps.

Questions

- Is the intention to provide rebates to customers who go green, or is the intention to throw up complicated roadblocks and not actually issue rebates?
- What if the water heater had failed? By requiring SVCE to be the first call before any work is done, would imply that you expect people to go without water, or other critical utilities, until SVCE deigns to approve their work?

I understand the intent of not having someone file paperwork for an upgrade that happened months or years apart, but as you can clearly see, there is very little time difference here, and replacing the water heater was a critical item.

So, this leads me to a couple of questions

Is the intention to provide rebates to customers who go green, or is the intention to throw up complicated roadblocks and not actually issue rebates?

What if the water heater had failed? By requiring SVCE to be the first call before any work is done, would imply that you expect people to go without water, or other critical utilities, until SVCE deigns to approve their work.

I understand the intent of not having someone file paperwork for an upgrade that happened months or years apart, but as you can clearly see, there is very little time difference here, and replacing the water heater was a critical item.

Now, I honestly do not expect you to change your policies, or to give me my rebate, even if it is probably the right thing to do.

But, I do want you to understand, that I believe it is disingenuous to offer rebates, if you have a set of draconian policies and arcane steps that you expect someone to

follow to get a rebate, especially when they may be in crisis solving mode.

Thank You

I believe my time is up,
And thank you for letting me speak.



TREASURER REPORT

**Fiscal Year to Date
As of April 30, 2023**

(Preliminary & Unaudited)

Issue Date: June 14, 2023

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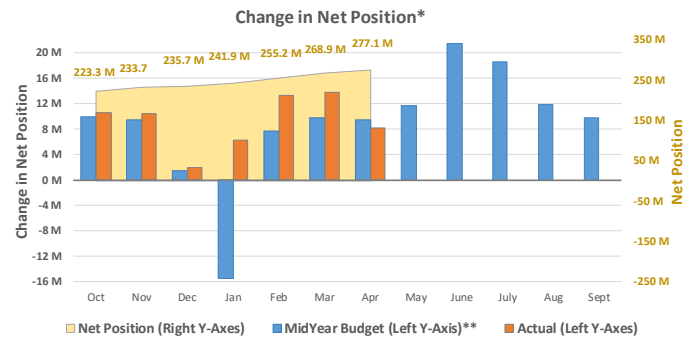
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SILICON VALLEY CLEAN ENERGY AUTHORITY
Financial Statement Highlights* (\$ in millions)
April 30, 2023

Page 1

Balance Sheet Highlights:

- > SVCE operations resulted in a change in net position of \$8.1 million for the month of April and \$64.4 million for fiscal-year-to-date (FYTD).*
- > Total Net Position increased further to \$277 M
- > SVCE is investing ~95% of available funds generating FYTD interest/dividend income of over \$3 million.



*Does not yet recognize unspent program dollars

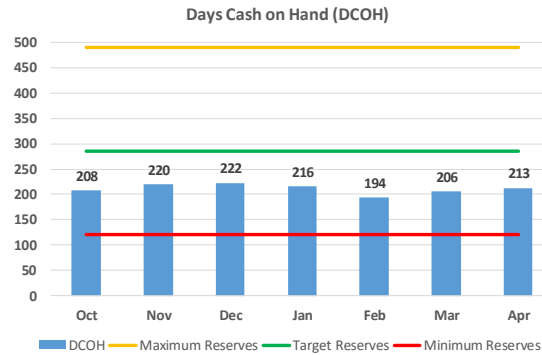
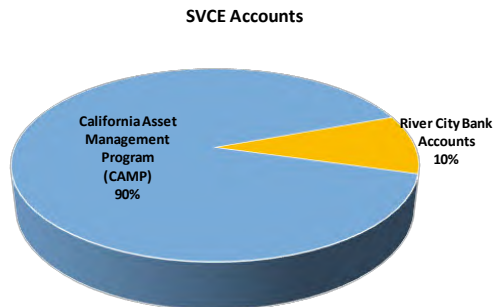
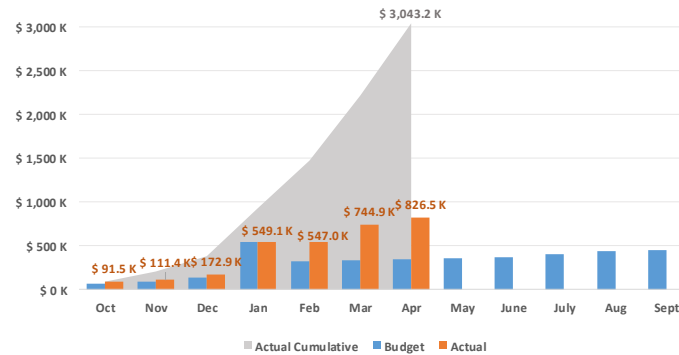
**For reconciliation purposes, budget numbers include actual program expenses and depreciation, exclude GASP 87 expenses.

SVCE Yield-bearing Accounts:

Combined Ending Balance	230.7 M
Total Interest/Div. Earned FYTD	3.4 M
Average Return On Investments	4.8%

* Includes River Bank accounts - Money Market, Collateral and ICS; CAMP; PFM Portfolio

** Average annualized Yield for the current month

**Investment Income**

*Due to a Calpine System billing error, revenues were understated by approximately \$3.3M that will be corrected in the next Treasurers report.

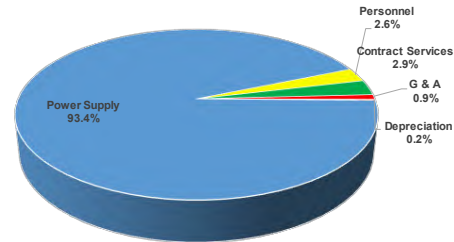
SILICON VALLEY CLEAN ENERGY AUTHORITY
Financial Statement Highlights** (\$ in millions)
April 30, 2023

Page 2

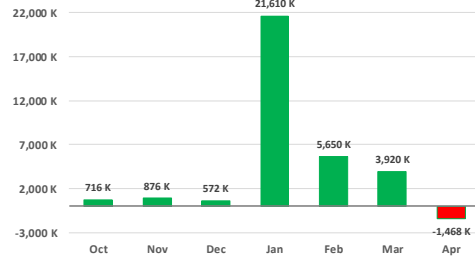
Summary of Actual Results vs. Budget (includes allocated but unspent program dollars):

- > FYTD operating margin of \$74.6 million or ~28.4% is above amended budget expectations of 18.6% operating margin for the fiscal year to date.
- > FYTD Power Supply costs are -11.8% below mid-year budget.
- > Retail GWh sales for the month landed -1% below budget.

YTD Operating Expenses



Net Increase in Available Fund Balance
Comparing Actuals to Mid-Year Budget



Variance Explanation:

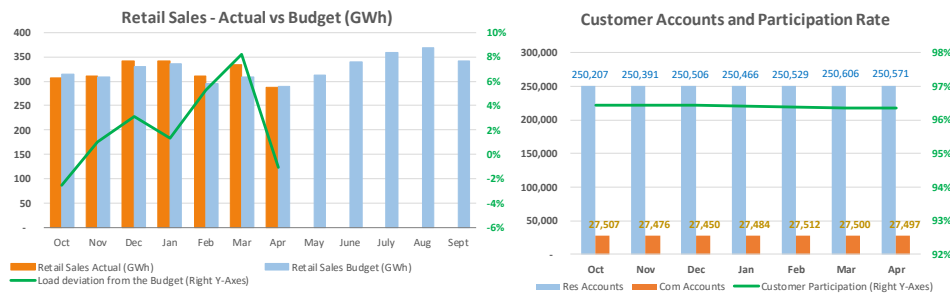
January - the variance mainly reflects a big drop in prices from December'22 to January'23 resulting in \$21.5M net power cost savings comparing to MY Budget estimations

February & March - mainly reflects the below budget net power supply cost and saving in all categories of other operating expenses.

April - due to a Calpine System billing error, revenues were understated by approximately \$3.3M that will be corrected in the next Treasurers report.

\$ in thousands	April			Fiscal YTD			Main Drivers:
	Actual	Budget	% Dif	Actual	Budget	% Dif	
Revenue	30.2 M	34.1 M	-11.4%	263.0 M	262.5 M	0.2%	<ul style="list-style-type: none"> Slightly higher than projected load levels for the fiscal year-to-date. \$21.5M lower Net Open Position costs compared to the mid-year budget. This is driven largely by forward prices used for the mid-year budget. Prices have decreased significantly. Staffing vacancies, underrunning professional services, lower marketing expenses and PG&E fees Reflects 66% higher Interest Income and -35% lower Capital Outlay
Power Supply Cost	20.9 M	22.3 M	-6.2%	188.4 M	213.6 M	-11.8%	
Operating Margin	9.3 M	11.8 M	-21.2%	74.6 M	48.9 M	52.6%	
Operating Expenses (ex Power)	1.7 M	2.3 M	-24.5%	11.2 M	16.1 M	-30.5%	
Other Non-Operating Items	-0.8 M	-0.3 M	145.9%	74.6 M	48.9 M	52.6%	
Net Increase in Available Fund Balance	8.4 M	9.9 M	-14.9%	32.1 M	0.2 M	13047.9%	

Customer Load Statistics:



Total Accounts 278,106
Opt-Out Accounts (Month) 69
Opt-Out Accounts (FYTD) 567
Opt-Up Accounts (Month) 24
Opt-Up Accounts (FYTD) (9)

Program Funds:

	Beginning Balance	End Balance	YTD Contributions	YTD Expenditures
General Program Fund	\$ 28,536,229	\$ 47,688,801	\$ 21,165,000	\$ 2,012,428
CRCR Fund*	\$ 7,982,993	\$ 11,582,993	\$ 3,600,000	\$ -
Electrification Discount Fund	\$ -	\$ 9,500,000	\$ 9,500,000	\$ -

* Customer Relief and Community Resilience Fund

** 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.

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of April 30, 2023

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 240,183,779
Accounts Receivable, net of allowance	32,398,220
Accrued Revenue	24,728,009
Other Receivables	845,701
Prepaid Expenses	1,395,023
Deposits	20,882,573
Restricted cash	162,893

Total Current Assets **320,596,198**

Noncurrent assets

Capital assets, net of depreciation	358,969
Lease asset, net of amortization	1,043,250
Deposits	45,130

Total Noncurrent Assets **1,447,349**

Total Assets **322,043,547**

LIABILITIES

Current Liabilities

Accounts Payable	905,700
Accrued Cost of Electricity	25,197,055
Other accrued liabilities	1,469,775
User Taxes and Energy Surcharges due to other gov'ts	1,148,882
Supplier securit deposits	8,120,000
Lease liability	497,706

Total Current Liabilities **37,339,118**

Noncurrent Liabilities

Supplier security deposits	7,031,250
Lease liability	618,158

Total noncurrent liabilities **7,649,408**

Total Liabilities **44,988,526**

NET POSITION

Net investment in capital assets	286,355
Restricted for security collateral	162,893
Unrestricted (deficit)	276,605,773
Total Net Position	\$ 277,055,021

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2022 through April 30, 2023

OPERATING REVENUES

Electricity Sales, Net	\$ 261,433,526
GreenPrime electricity premium	844,481
Other income	<u>29,156</u>

TOTAL OPERATING REVENUES **262,307,163**

OPERATING EXPENSES

Cost of Electricity	188,404,677
Contract services	5,796,504
Staff compensation and benefits	5,236,871
Other operating expenses	1,884,996
Depreciation	<u>355,087</u>

TOTAL OPERATING EXPENSES **201,678,135**

OPERATING INCOME(LOSS) **60,629,028**

NONOPERATING REVENUES (EXPENSES)

Grant income	716,553
Interest Income	3,043,224
Financing costs	<u>(17,306)</u>

TOTAL NONOPERATING REVENUES (EXPENSES) **3,742,471**

CHANGE IN NET POSITION **64,371,499**

Net Position at beginning of period 212,683,522

Net Position at end of period **\$ 277,055,021**

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS October 1, 2022 through April 30, 2023

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 290,809,667
Other operating receipts	17,539,496
Payments to suppliers for electricity	(220,668,785)
Payments for other goods and services	(8,799,727)
Payments for staff compensation and benefits	(4,932,388)
Tax and surcharge payments to other governments	(5,119,946)
Net cash provided (used) by operating activities	<u>68,828,317</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Grant revenue received	716,553
Finance costs paid	(1,760)
Net cash provided (used) by financing activities	<u>714,793</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(75,435)</u>
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CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>3,043,224</u>
Net change in cash and cash equivalents	72,510,899
Cash and cash equivalents at beginning of year	<u>167,835,773</u>
Cash and cash equivalents at end of period	<u>\$ 240,346,672</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 240,183,779
Restricted cash	162,893
Cash and cash equivalents	<u>\$ 240,346,672</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)

October 1, 2022 through April 30, 2023

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

Operating Income (loss)	\$ 60,629,028
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	355,087
(Increase) decrease in net accounts receivable	23,265,001
(Increase) decrease in other receivables	(763,987)
(Increase) decrease in accrued revenue	780,689
(Increase) decrease in prepaid expenses	(417,095)
(Increase) decrease in current deposits	(317,251)
Increase (decrease) in accounts payable	(102,108)
Increase (decrease) in accrued cost of electricity	(14,201,854)
Increase (decrease) in accrued liabilities	81,875
Increase (decrease) in energy settlements payable	3,344,047
Increase (decrease) in taxes and surcharges due to other governments	(545,115)
Increase (decrease) in supplier security deposits	<u>(3,280,000)</u>
Net cash provided (used) by operating activities	<u>\$ 68,828,317</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
BUDGETARY COMPARISON SCHEDULE
October 1, 2022 through April 30, 2023

	FYTD	FYTD	Variance		FY 2022-23	FY 2022-23
	Actual	Budget	\$	%	Budget	Remaining Budget
OPERATING REVENUES						
Energy Sales	\$262,150,079	\$261,782,239	\$367,840	0%	\$522,853,000	\$260,702,921
Green Prime Premium	844,481	665,463	\$179,018	27%	1,055,000	210,519
Other Income	29,156	29,167	(11)	0%	50,000	20,844
TOTAL OPERATING REVENUES	263,023,716	262,476,869	546,847	0%	523,958,000	260,934,284
ENERGY EXPENSES						
Power Supply	188,404,677	213,579,773	(25,175,096)	-12%	392,436,000	204,031,323
Operating Margin	74,619,039	48,897,096	25,721,943	53%	131,522,000	56,902,961
OPERATING EXPENSES						
Data Management	1,861,131	1,990,625	(129,494)	-7%	3,413,000	1,551,869
PG&E Fees	687,217	857,500	(170,283)	-20%	1,470,000	782,783
Salaries & Benefits	5,236,871	6,582,847	(1,345,976)	-20%	11,285,000	6,048,129
Professional Services	1,779,036	4,701,506	(2,922,470)	-62%	8,016,000	6,236,964
Marketing & Promotions	403,555	506,641	(103,086)	-20%	862,000	458,445
Notifications	53,750	76,563	(22,813)	-30%	131,000	77,250
Lease	301,441	306,250	(4,809)	-2%	525,000	223,559
General & Administrative	876,767	1,083,329	(206,562)	-19%	1,857,000	980,233
TOTAL OPERATING EXPENSES	11,199,768	16,105,261	(4,905,493)	-30%	27,559,000	16,359,232
OPERATING INCOME/(LOSS)	63,419,271	32,791,835	30,627,436	93%	103,963,000	40,543,729
NON-OPERATING REVENUES						
Investment Income	3,043,224	1,835,882	1,207,342	66%	3,870,000	826,776
TOTAL NON-OPERATING REVENUES	3,043,224	1,835,882	1,207,342	66%	3,870,000	826,776
NON-OPERATING EXPENSES						
Financing	1,760	1,750	10	1%	3,000	1,240
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	75,436	116,667	(41,231)	-35%	200,000	124,564
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	34,340,436	34,381,667	(41,231)	0%	34,465,000	124,564
NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE	\$32,120,299	\$244,300	\$31,875,999	13048%	\$73,365,000	

SILICON VALLEY CLEAN ENERGY AUTHORITY
PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2022 through April 30, 2023

	<u>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	2,012,428	12,994,654	13.4%
Net increase (decrease) in fund balance	\$ 6,157,918	\$19,152,572		
Fund balance at beginning of period		28,536,229		
Fund balance at end of period		<u>\$47,688,801</u>		

CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
BUDGETARY COMPARISON SCHEDULE*
October 1, 2022 through April 30, 2023

	<u>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	\$ (3,119,875)	3,600,000		
Fund balance at beginning of period		7,982,993		
Fund balance at end of period		<u>\$11,582,993</u>		

ELECTRIFICATION DISCOUNT FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2022 through April 30, 2023

	<u>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	\$ 9,400,000	9,500,000		
Fund balance at beginning of period		-		
Fund balance at end of period		<u>\$9,500,000</u>		

*Some of these expenditures contain CRCR expenses that will be corrected in the next treasurers report.

SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND

BUDGET RECONCILIATION TO STATEMENT OF

REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2022 through April 30, 2023

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 32,120,299
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(355,087)
Subtract program expense not in operating budget	(2,012,428)
Add back GASB 87 expenses not in operating budget	278,279
Add back transfer to Program fund	34,265,000
Add back capital asset acquisition	75,436
Change in Net Position	<u>64,371,499</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2022 through April 30, 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	\$ 40,246,959	\$ 30,080,541						\$ 261,433,526
Green electricity premium	133,572	123,147	130,539	120,693	101,229	127,670	107,631						844,481
Other Income	2,250	15,255	-	2,250	5,651	2,750	1,000						29,156
Total operating revenues	35,418,846	33,735,061	39,886,655	42,443,874	40,256,176	40,377,379	30,189,172	-	-	-	-	-	262,307,163
OPERATING EXPENSES													
Cost of electricity	23,218,378	21,819,493	35,364,953	35,834,118	26,012,142	25,276,392	20,879,201						188,404,677
Staff compensation and benefits	656,536	673,219	792,543	742,292	723,137	787,636	861,508						5,236,871
Data manager	265,853	265,687	265,535	265,615	266,006	266,325	266,110						1,861,131
Service fees - PG&E	98,200	98,021	98,152	98,182	98,159	98,157	98,346						687,217
Consultants and other professional fees	410,507	374,917	575,873	298,921	372,763	700,446	514,729						3,248,156
Other operating expenses	200,337	182,040	881,981	206,710	(17,169)	220,350	210,747						1,884,996
Depreciation	50,510	50,510	50,449	50,397	50,866	50,927	51,428						355,087
Total operating expenses	24,900,321	23,463,887	38,029,486	37,496,235	27,505,904	27,400,233	22,882,069	-	-	-	-	-	201,678,135
Operating income (loss)	10,518,525	10,271,174	1,857,169	4,947,639	12,750,272	12,977,146	7,307,103	-	-	-	-	-	60,629,028
NONOPERATING REVENUES (EXPENSES)													
Grant income	-	-	-	716,553	-	-	-						716,553
Interest income	91,459	111,370	172,923	549,063	546,985	744,934	826,490						3,043,224
Financing costs	(2,428)	(2,359)	(4,010)	(2,251)	(2,152)	(2,083)	(2,023)						(17,306)
Total nonoperating revenues (expenses)	89,031	109,011	168,913	1,263,365	544,833	742,851	824,467	-	-	-	-	-	3,742,471
CHANGE IN NET POSITION	\$ 10,607,556	\$ 10,380,185	\$ 2,026,082	\$ 6,211,004	\$ 13,295,105	\$ 13,719,997	\$ 8,131,570	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 64,371,499

**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2022 through April 30, 2023**

Ending Balance of SVCE Accounts:	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
River City Bank Accounts	\$ 208,116,692	\$ 221,541,600	\$ 227,161,983	\$ 70,193,524	\$ 66,497,950	\$ 45,850,620	\$ 23,833,640	\$ -	\$ -	\$ -	\$ -	\$ -
California Asset Management Program (CAMP)	\$ -	\$ -	\$ -	\$ 140,486,848	\$ 140,996,992	\$ 177,721,225	\$ 216,512,539	\$ -	\$ -	\$ -	\$ -	\$ -
PFM Asset Management Investment Portfolio	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Ending Balance	\$ 208,116,692	\$ 221,541,600	\$ 227,161,983	\$ 210,680,372	\$ 207,494,943	\$ 223,571,844	\$ 240,346,179	\$ -	\$ -	\$ -	\$ -	\$ -

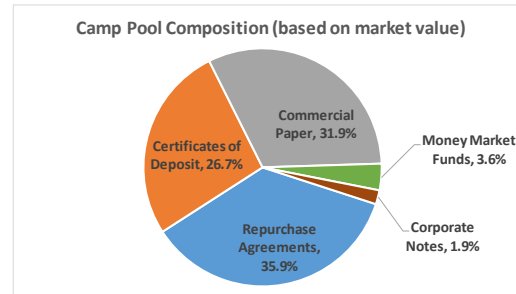
Return On Investments:

Annual % Yield	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
River City Bank Accounts	0.50%	0.58%	0.85%	1.07%	1.44%	2.39%	2.77%					
California Asset Management Program (CAMP)	0.00%	0.00%	0.00%	4.53%	4.73%	4.80%	4.97%					
PFM Asset Management Investment Portfolio	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%					
Average Return On Investments:	0.50%	0.58%	0.85%	3.38%	3.68%	4.31%	4.75%					

Interest Earned	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
River City Bank Accounts	\$ 67,811	\$ 86,193	\$ 139,716	\$ 54,891	\$ 36,841	\$ 13,057	\$ 24,386	\$ -	\$ -	\$ -	\$ -	\$ -
California Asset Management Program (CAMP)	\$ -	\$ -	\$ -	\$ 486,848	\$ 510,145	\$ 724,233	\$ 791,314	\$ -	\$ -	\$ -	\$ -	\$ -
PFM Asset Management Investment Portfolio	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Interest/Div. Earned	\$ 135,621	\$ 172,385	\$ 279,432	\$ 596,629	\$ 583,826	\$ 750,347	\$ 840,087	\$ -	\$ -	\$ -	\$ -	\$ -

CAMP Portfolio Statistics*As of April 30, 2023*

Beginning Market Value	\$ 177,721,225
Ending Market Value	\$ 216,512,539
Yield at Market	4.97%
Weighted Average Maturity (days)	28



Comparison to Benchmark Chart will be included once we have 3 months of return data with PFM

**SILICON VALLEY CLEAN ENERGY AUTHORITY
RETAIL SALES, CUSTOMER ACCOUNTS AND AGING REPORT**

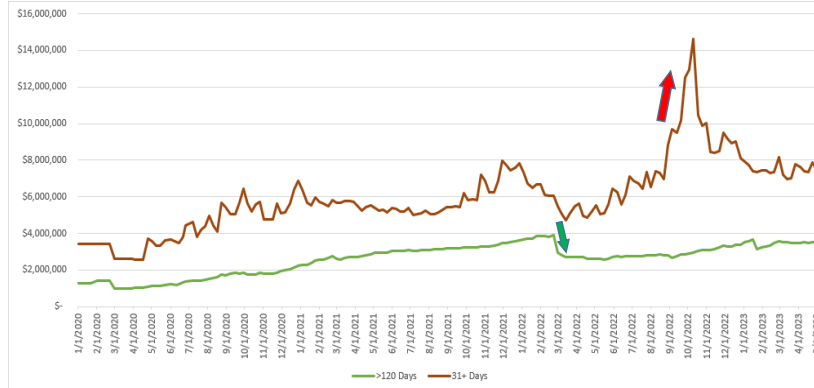
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	YTD
Retail Sales Actual (GWh)	307	311	341	341	311	334	287						2,232
Retail Sales Budget (GWh)	315	308	331	336	295	309	290	313	340	358	369	342	2,184
Load deviation from the Budget (F)	-2.5%	1.1%	3.1%	1.3%	5.3%	8.2%	-1.1%						2.2%
Customer Participation Rate Res	96.4%	96.4%	96.4%	96.4%	96.3%	96.3%	96.3%						
Customer Participation Rate Com	96.7%	96.7%	96.7%	96.7%	96.7%	96.7%	96.7%						
Total Accounts	277,714	277,867	277,956	277,950	278,041	278,106	278,068						
Opt-Out Accounts	74	62	99	126	137	69	77						644
Opt-Up Accounts	-3	4	-6	-36	8	24	-7						-16

0.07

26.50

Age Summary (as of 5/1/2023)

<30 days	\$30,539,153
<60 days	\$1,811,972
<90 days	\$1,335,529
<120 days	\$815,503
Older	\$3,537,603

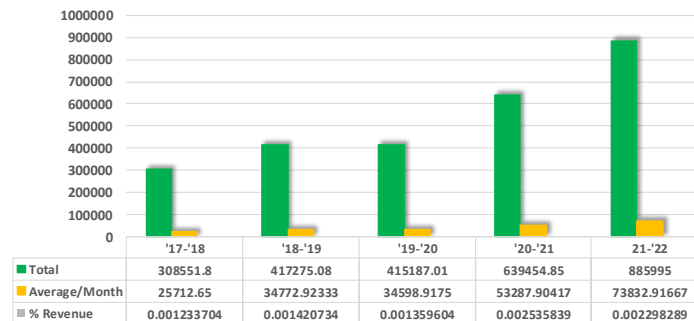
Accounts Receivable Days**26 Days****\$38,039,760****TOTAL DUE****SVCE Arrearager Total for customers 31+ days late and 120+ days late**

	Date	Amount
High	11/29/2021	\$7.99M
Low	4/17/2020	\$2.54M
Current	5/1/2023	\$7.5 M

- Green arrow indicates receipt of \$1.3M in Federal CAPP funds.
- An additional \$717K in CAPP funding provided in Winter 2023.
- Growth at red arrow indicates short-term PG&E billing-hold issue in Fall 2022 that was quickly resolved.

Bad Debt % (Budget)**0.90%****Bad Debt % (Actual)**

April 2023 FYTD

0.23%**SVCE Write-offs Bv Fiscal Year**



Staff Report – Item 1c

Item 1c: Approve Additional Funding of \$250,000 for eHub Resources for a Not to Exceed Amount of \$1.1M

From: Girish Balachandran, CEO

Prepared by: Adam Selvin, Director of Energy Services & Community Relations
Pamela Leonard, Senior Manager of Communications

Date: 6/14/2023

RECOMMENDATION

Staff recommends the Board approve the allocation of an additional \$250,000 for the ongoing operation of eHub. The new amount allocated for eHub would become \$1,100,000. This additional budget will allow SVCE to cover the vendor partner fees until the end of the 2023-2024 fiscal year and continue educating customers on electrification and enabling customer action on eHub.

BACKGROUND

In 2018, the SVCE Customer Program Advisory Group provided input on the Decarbonization Programs Roadmap, emphasizing the need to provide residential customers with educational resources. The following year, staff started the process of building eHub, an online resource center for customers to learn more about electrification. SVCE issued a competitive Request for Proposals to select vendor partners who were capable of providing online tools to help customers understand the benefits of going electric and enable actions such as evaluating efficient, electric home appliances, electric vehicles (EV) and solar and battery storage options. The Board approved \$850,000 to develop and operate these eHub resources out of the overall programs budget.

In fall 2020, eHub was formally launched to customers. Per goals identified in the SVCE strategic plan, SVCE is continuing to expand eHub capabilities to increase accessibility and resources to support customers' electrification journeys by bringing electrification to customers' minds, providing knowledge to customers about the benefits of electrification and assisting customers with going electric. With over three years of operating eHub, customers have had access to tools and resources on the Enervee platform, known as the 'Appliances Assistant,' ZappyRide platform, known as the 'EV Assistant,' and Electrum platform, known as the 'Solar+Battery Assistant.'

ANALYSIS & DISCUSSION

The objective of eHub is to inspire, educate, and enable customers to take action with respect to electrification and decarbonization in mobility and the built environment. Significant education is needed to help familiarize customers with electrification, and the benefits of electric appliances for homes, EVs, and solar and storage.

Of the Board-approved \$850,000 for eHub, SVCE has thus far utilized \$744,176 for the development and operation of eHub, which remains under the previously approved budget. In 2023, the Board approved contract amendments to authorize additional funding for eHub vendors as new capabilities have been added to the tools. Approval of staff's recommendation will allocate additional funds to the overall eHub program from available funds in the existing programs budget. Based on the successful performance of eHub over the past three years, SVCE intends to maintain its operation and allocate a higher budget for its continued functioning

Agenda Item: 1c**Agenda Date: 6/14/2023**

through September 30, 2024. Staff plans to issue another Request for Proposals in Q1 2024 to re-examine the vendor landscape for eHub 2.0.

Below is a breakdown of what has been invoiced, additional spend, and anticipated spend:

Active Vendor Partner Agreement	Approved Not-to-Exceed	Invoiced	Additional Spend Expected by End of Agreement
Electrum MSA 1	\$30,000	\$20,000	-
Enervee MSA 1	\$566,500	\$506,826	-
Enervee MSA 1 Amendment 1	\$175,500	-	\$175,500
SMUD Task Order 3	\$92,400	\$92,350	-
ZappyRide MSA 1	\$105,000	\$90,000	-
ZappyRide MSA 2 Amendment 1 + Amendment 2	\$89,570	\$35,000	\$54,570
Total	\$1,058,970	\$744,176	\$230,070

Upcoming Vendor Partner Agreement	Additional Anticipated Spend through End of FY 23- 24
ZappyRide MSA 2 Amendment 3	\$34,178
Misc. Costs	\$91,576
Total	\$125,754

Invoiced (\$744,176) + Additional Spend (\$230,070) + Anticipated Spend (\$125,754) = \$1.1M for eHub through end of FY 23-24

Current allocation for eHub is \$850,000 so an additional \$250,000 needs to be allocated to cover these costs.

STRATEGIC PLAN

eHub is in alignment with the SVCE Strategic Plan, Goal #6 Measure #2: Enable customer education, engagement and action related to electrification and decarbonization, via online tools, resources and promotions. By increasing the eHub budget to align with the current vendor scope of work, SVCE can continue to inspire.

FISCAL IMPACT

Through the annual budget process, the Board approved 2% of annual operating revenues for programs. The proposed allocation of an additional \$250,000 for eHub remains within this approved programs budget. Therefore, the staff proposal has no incremental fiscal impact.



Staff Report – Item 1d

Item 1d: Authorize the Chief Executive Officer to Execute a Three-Year Agreement with the Sacramento Municipal Utility District (SMUD) for Electrification Concierge Consultant Services

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy
 Jessamyn Allen, Senior Community Programs Specialist

Date: 6/14/2023

RECOMMENDATION

Staff recommends the Board approve and authorize the CEO to execute an agreement with the Sacramento Municipal Utility District ("SMUD") for SVCE residential electrification concierge services for a period of three years for an amount not to exceed \$892,059.

BACKGROUND

In November 2020, the Board approved the Building Decarbonization Joint Action Plan, which identified FutureFit Homes and Buildings as one of SVCE's cornerstone programs to support the decarbonization of existing buildings. The concept was to provide comprehensive assistance to SVCE customers electrifying their homes by navigating and accessing the many existing and forthcoming energy programs providing financial assistance for building decarbonization and energy efficiency, offering additional SVCE incentives, and identifying other actions necessary to remove barriers for customers.

In October 2022, SVCE launched the initial phase of this program, FutureFit Homes rebates. This phase expanded upon SVCE's existing heat pump water heater rebates to provide new rebates for installing heat pump heating, ventilation, and air conditioning systems, prewiring for future electrification, and removing the gas meter for fully electrified homes. To help SVCE customers navigate the ever-changing building decarbonization rebate landscape, SVCE routinely updates the rebate program webpage as new regional, state, and federal incentive programs are launched.

In this second phase of the program, SVCE will launch a concierge service to provide comprehensive, tailored support for SVCE customers to: answer their questions about electrification clearly and simply, offer personalized support to help them feel comfortable taking action, help them maximize the incentives available to them through white-glove-level service, provide technical assistance and whole-home electrification planning, and to connect customers to complementary SVCE and non-SVCE programs (including those created by the Inflation Reduction Act) that will enable their home electrification journey.

ANALYSIS & DISCUSSION

The concierge concept was born from the desire to offer a tailored home electrification resource for SVCE residential customers that can meet them wherever they are in their electrification journey. The concierge will provide custom, accurate, and relevant information to support even non-technical customers in understanding electric technologies, stepping through the processes to pursue all available incentives, and feeling comfortable with the final installation. The concierge consists of a phone hotline and website that any customer can engage with to learn how to take steps to electrify their homes. By providing a simple,

Agenda Item: 1d**Agenda Date: 6/14/2023**

approachable channel that can effortlessly provide technical assistance, planning resources, and information on existing programs, the concierge will reduce the expertise, time, and resources customers need to undertake home electrification upgrades. This supported pathway will help SVCE customers avoid a disjointed, potentially frustrating journey across multiple programs, websites, and call centers, making electrification more accessible to customers.

The concierge design was developed through an extensive design review process involving staff across SVCE departments. Throughout the design, SVCE actively researched existing utility and CCA customer electrification assistance programs to identify best practices. The concierge design was also informed by many customer inquiries received through the existing SVCE phone line, in-person events, and submitted to rebate program staff. Customers have shared their difficult experiences trying to understand which rebates they are eligible for, which may depend on many factors, such as their existing equipment or household income. SVCE customers also have fundamental questions about how electric technologies work, want to understand what type of electric technology will work best for them given their specific housing type, or how they should sequence their home electrification upgrade. The concierge aims to address all of these customers' needs with a simple, coherent offering that is interactive and can address questions in real-time. The service will be additive to our existing eHub resources, which provide a strong base of information and support. Reducing the barriers to electrification for customers across every level of expertise is key to enabling electrification at scale.

The concierge service will be well-versed in SVCE program offerings and provide more tailored rebate layering guidance through phone, chat, and email support. Additionally, the concierge will be staffed with electrification experts who are able to provide SVCE customers with basic and complex technical assistance, along with whole-home electrification planning. Altogether, the concierge will complement SVCE's existing rebate offerings by providing comprehensive services to help SVCE customers electrify their homes.

SVCE program staff issued a request for proposals for the electrification concierge service in early April. Six responses were received, and interviews were held with top proposers in mid-May. SMUD was selected as the winning proposal. SMUD is the nation's sixth-largest community-owned, not-for-profit electric company with over 75 years of experience in utility operations. They provide award-winning customer service, including being ranked number one by JD Power for customer phone service. The SVCE concierge will leverage SMUD's existing in-house call center and technical expertise that provide similar and highly-rated services for their own customer base. SMUD also has extensive resources to provide SVCE customers with multilingual support, as well as deep experience working with underserved customer segments through their income-qualified programs and call center.

The program budget will also support user testing and ongoing program updates based on customer feedback, as well as additional concierge staff training to keep them up to date as new SVCE, local, state, or federal programs and offerings are launched, such as accessible finance programs or eHub's Water Heater Assistant. Furthermore, a key goal of the concierge will be to learn what concierge resources are most valuable to SVCE customers and what are the common barriers to home electrification; this information will guide future SVCE program design and offerings.

SVCE aims to launch the concierge in early fall 2023 and expects to support approximately 1,000 hotline calls, 350 requests for incentive layering guidance, 350 requests for technical assistance, and 100 electrification plans in its first year of operation. The actual reach will depend on how broadly the offer is marketed and embedded elsewhere across the SVCE website. The level of engagement with the concierge is intended to grow over time. Details on SMUD's plan for the SVCE concierge are included in the attached agreement.

STRATEGIC PLAN

As referenced in SVCE's Strategic Plan Goal 10, Measure 2 to lead program deployment, the concierge service is a part of our cornerstone built environment program known as FutureFit Homes and Buildings identified in our Building Decarbonization Joint Action Plan.

ALTERNATIVE

Do not authorize the CEO to execute the agreement with SMUD. Staff could pursue an alternative approach to providing technical assistance instead of the concierge service by directing customer inquiries to existing, non-SVCE resources, like BayREN, but would have no visibility into the customer experience or opportunity to learn about specific barriers common to SVCE customers.

FISCAL IMPACT

Approval of this contract with SMUD for \$892,059 will have no incremental fiscal impact. Funding for this service will come from the existing \$4.95M budget for FutureFit Homes. Of that budget, \$2.925M has been allocated for incentives, \$875k for administrative support, and the remaining \$1.15M was set aside for additional services like this concierge. Funding for FutureFit Homes was approved by the board as part of the Building Decarbonization Joint Action Plan and Resolution 2022-10 approving funding allocations for "Double Down" on Decarbonization Programs that were adopted in November 2020 and March 2022, respectively.

ATTACHMENTS

1. Agreement between SVCE and SMUD for Electrification Concierge Consultant Services

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
SACRAMENTO MUNICIPAL UTILITY DISTRICT FOR
Electrification Concierge Consultant Service**

THIS AGREEMENT ("Agreement"), is entered into this 15th day of June, 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and SACRAMENTO MUNICIPAL UTILITY DISTRICT, a political subdivision of the State of California established under the Municipal Utility District Act whose address is 6201 S Street, Sacramento CA, 95817 (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 electrification concierge services for residential customers upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on June 15, 2023 and shall terminate on August 27, 2026 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 eight hundred and ninety-two thousand fifty-nine dollars (\$892,059.00) 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.** To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend against third party claims, hold harmless and indemnify Authority and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those Authority agents serving as independent contractors in the role of Authority officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including reasonable fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all reasonable attorneys’ fees and experts’ costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

B. **Intellectual Property Indemnification.** Except for material in the public domain or provided by Authority, 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 reasonably acceptable to Authority, 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 or satisfy the requirements through self-insurance. 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. Tracy Carlson, Director of Community Energy Services (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. It is understood that both Parties are subject to the California Public Records Act (Gov. Code § 7920.000 et seq.). If a request under the California Public Records Act is made to view a Party’s Data, the other Party shall notify the Party that provided the Data of the request and the date that such records will be released to the requester unless that Party obtains a court order enjoining that disclosure. If the Party that provided the Data fails to obtain a court order enjoining that disclosure, the Party receiving the request will release the requested information on the date specified.

F. 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:
Sacramento Municipal Utility District
6201 S Street
Sacramento, CA 95817
Attn: Ali Crawford, SMUD Legal

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

Justin Zagunis, Director of Decarbonization Programs and Policy

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
Sacramento Municipal Utility District

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

Exhibit A **Scope of Services**

SMUD will support SVCE's vision for a comprehensive, white-glove, customer-facing residential building electrification advisory service to their customers (hereafter referred to by the working title "Concierge" or "Concierge service") for at least 3 years. The intent of the Concierge service is to help customers access the myriad programs and resources offered by SVCE and other entities as applicable to a given customer.

The overarching goals of the Concierge service will be to provide seamless support, assist a broad range of customers, and provide enhanced support to low-income and other underserved customer segments all while supporting the end goal of whole-home electrification. The Concierge service will focus on residents and owners of single-family homes and small multi-family properties (4 units or fewer) with non-central systems. The Concierge service will also be prepared to respond to residents in larger multi-family properties if they have questions.

SMUD will support the core elements of the Concierge program, including:

- Hotline and web interface - A central hotline offering phone, online chat, and email support and an online Concierge landing page.
- Incentives layering assistance - Support in navigating the complex incentive landscape and effectively layering incentives to achieve the best price.
- Technical assistance - Access to technical experts who can help customers troubleshoot specific scenarios and detailed questions, with a specialty in minimizing the need for electrical panel and service upgrades ("Technical Assistance").
- Electrification plans – Whole-Home Building Electrification Plans ("Electrification Plan") tailored to the customer's home that map out the customer's baseline energy use, energy efficiency opportunities, existing and future electrical panel capacity, steps they can take to fully electrify over time, and contractor recommendations and quotes for specific upgrades.
- Program referrals – Program referrals to complementary SVCE offerings that are relevant and of interest to the customer. The Concierge will understand all major, active programs at SVCE, as well as contractor resources and electricity rate options.

The Concierge service will provide a seamless customer journey and will be supported by SMUD's many resources, including:

- Contact Center ("Contact Center") staffed with Energy Advisors ("Energy Advisors") trained in high-quality energy conversations and electrification technologies.
- Energy Specialists ("Energy Specialists") skilled at providing technical assistance to SMUD customers with high bills, customers in disadvantaged communities, ethnically diverse customers, and customers in multifamily dwellings.
- Energy Experts ("Energy Experts") who use energy usage data, premise data, and demographic data to create actionable energy plans for SVCE customers across multiple segments.
- Community Energy Services ("CES") team with 25 people whose mission is to provide services to California's Community Choice Aggregators ("CCAs").
- Market Research, Information Technology ("IT"), and Digital User Experience departments
- SMUD's in-house Culture Experts help translate materials into nine different languages, ensuring cultural sensitivity.
- Concierge Customer Relationship Management tool ("CRM"), which will be hosted,

managed, and maintained by SMUD.

Phone Hotline & Web Interface

SMUD will build and maintain a website for SVCE. SMUD will leverage their expertise from their Digital User Experience and Market Research departments to build a web experience that is engaging and informative and iterated upon through user testing. These departments will help SMUD refine the web design to meet customer expectations and deliver on SVCE's objectives and key performance indicators ("KPIs").

The Concierge website will include a description of the Concierge services, the core elements (incentive layering support, Technical Assistance, Electrification Plans, and program referrals), the Concierge support team, and expertise. An 800 number will be prominently displayed so customers can call if that is their preferred channel of communication. An email address contact will also be available if they wish to interact with the Concierge digitally. SMUD will enable Chat on this webpage which will be monitored by Energy Advisors. Links to SVCE programs and other resources will be included. The web page will include a web form that customers can complete. SMUD will develop scenarios or a brief survey that customers can complete which will tell SMUD the best, likely place to introduce the customer to the service. The inputs will help SMUD direct customers to the appropriate core service element. All content will be approved by SVCE's marketing team. Form submission information will be recorded in CRM so that it will be available for all Concierge team members to use.

The hotline will be hosted by SMUD's Call Center, staffed by Energy Advisors who will be able to answer requests related to SVCE, SVCE programs, high bill drivers, NEM impacts, incentives available, electrification technology basics, contractor options and tools, phone or web resources, and the Concierge service in general. Energy Advisors will also be able to assist customers in enrolling in SVCE programs (such as FutureFit Homes, GridShift, etc.), enrolling in Pacific Gas and Electric ("PG&E") programs, such as the California Alternate Rates for Energy Program ("CARE"), and start incentive application processes (such as BayREN, TECH, etc.). Energy Advisors will be able to help contractors (with tasks such as how to get on a contract list, enroll in FutureFit Fundamentals, etc.). This Concierge group will be front-line and address the vast majority of customer requests.

SMUD will train staff on SVCE-specific information, including SVCE program information, incentives and resources available to customers who live in the SVCE territory.

Technical Assistance & Electrification Plans

There will be a second group of Energy Specialists and Energy Experts that will service customers who need Technical Assistance and Electrification Plans. This separation allows for specialization in skills and knowledge and ultimately better service for customers. There will be coordination between the groups so that it feels like one team to customers.

SMUD's Energy Specialists have expansive electrification and energy expertise, not limited to their abilities to:

- Conduct virtual energy audits
- Provide electrification recommendations
- Understand panel upgrade tradeoffs & electrical distribution systems

SMUD's Energy Experts have similar skillsets as the Energy Experts, as well as significant

experience in technical energy auditing.

SMUD will develop customer and contractor-centric whole-building Electrification Plans for SVCE. SMUD will leverage their learnings on what engages customers, educates them, drives customer action, as well as what encourages and works for contractors. SMUD will deliver based on personal accuracy so the plans are individualized, and create a design that has the flexibility to be meaningful for any residential housing situation. SMUD's Market Research group will help perform research and test design options and ultimately to co-create a final Electrification Plan design that is right for SVCE and SVCE customers.

Data needed from the customer and/or SVCE include:

- Contact information, property address
- Rate category, energy usage
- Estimated costs associated with recommended electrification equipment
- Incentives the customer is eligible for, tax incentives and other benefits the customer is eligible for, estimated operational cost savings, net costs
- Current equipment and envelope data and status
- Efficiency recommendations, electrification recommendations, panel recommendations, recommendations loading order, contractor list, considerations.

Data sources may include:

- 4013 Electronic Data Interchange ("EDI") file
- Equipment cost averages for SVCE territory from contractors
- SVCE incentives list and eligibility criteria from website
- Incentives and tax information from relevant websites
- Estimated operation costs savings
- Current equipment and envelope data and status from customer conversation, recommendations, loading order
- Contractor list from SVCE website

To ensure the Electrification Plan is actionable for both customers and contractors, SMUD will engage with customers who receive one of the Electrification Plans and those customers will be asked what information was most helpful to them, in order to refine the Electrification Plan over time. SMUD will also engage the contractors on SVCE's contractor list and ask them for feedback into the final Electrification Plan design.

Customer Journey

SMUD will ensure consistency in point of contact via a dedicated team model. Each customer will get a team assigned to them as they start their journey consisting of one Energy Advisor, one Energy Specialist, one Energy Expert, and one Program Manager (not that all customers will need assistance from all members). When a customer calls into the hotline, an Energy Advisor will look to see if there is an existing service record for that customer and whether the customer has already participated in any SVCE programs and whether they are qualified low-income. The Energy Advisor will ask the customer a series of questions. Based on the responses, the Energy Advisor will then provide the customer some information, help them complete an enrollment, help them get to web resources, and provide whatever the customer needs. If the Energy Advisor deems Technical Assistance or an Electrification Plan is the next best step for the customer, they will offer to set an appointment with an Energy Specialist or an Energy Expert. The Advisor will also offer to get information for the customer from an Energy

Specialist and get back to them personally, if the customer is uncomfortable setting an appointment. If at any time, a team member feels the customer needs “extra care”, the team member will transfer the customer to the Program Manager for special assistance.

SMUD will dedicate one Program Manager from their CES Program Administration team to oversee all activity. SMUD has nine Energy Specialists, two seniors, who are trained and provide technical assistance to SMUD customers today. They take calls and perform virtual assessments as well as in-home assessments. They make recommendations on measures and projects and can speak to the options related to panel upgrades. Two Energy Specialists will be selected to join the Concierge team. Other Energy Specialists can be selected as needed.

SMUD will ensure coordination among all team members through unified training materials, detailed interaction records, and well-defined hand-offs through workflows. Targeted training blocks will be developed by SMUD’s training staff to increase knowledge and synchronize the team.

A staffing and training plan is diagramed below.

Energy Advisors	Energy Specialists	Energy Experts	Program Manager
Hotline Incentive Layering Knowledge Base Utility industry High bill drivers Customer experience excellence Energy efficiency basics Electrification basics Training Blocks Concierge program and process Hotline, website, CRM SVCE and other Programs SVCE and global incentives Electrification intermediate Contractor options Resources	Technical Assistance Knowledge Base Utility industry High bill drivers Customer experience excellence Energy efficiency Electrification technologies Technology vendors Installation processes Training Blocks Concierge program and process Hotline, website, CRM CCAs SVCE SVCE and other Programs SVCE and global incentives Contractor options Resources	Electrification Plans Knowledge Base Utility industry High bill drivers Customer experience excellence Energy efficiency basics Electrification technologies Technology vendors Installation processes Training Blocks Concierge program and process Hotline, website, CRM CCAs SVCE SVCE and other Programs SVCE and global incentives Contractor options Resources	Escalations Knowledge Base Utility industry High bill drivers Customer experience excellence Electrification technologies Technology vendors Installation processes CCAs SVCE SVCE and other Programs SVCE and global incentives Contractor options Resources Training Blocks Concierge program and processes Hotline, website, CRM

SMUD and SVCE estimate that the number of customer interactions supported by the Concierge over the next 3 years to be the following:

	Hotline	Web	Incentives Layering	Technical Assistance	Electrification Plans	Total
1	1,000	200	350	350	100	
2	1,200	240	420	420	120	
3	1,440	288	504	504	144	
Total	3,640	728	1,274	1,274	364	7,280

SVCE and SMUD estimate the amount of Concierge staff time needed to support each customer interaction to be:

Hotline Calls	10 minutes
Web Chats/emails	10 minutes
Incentive Layering Assistance	10 minutes
Technical Assistance	30 minutes
Electrification Plans	60 minutes for customer call support 120 minutes for plan development

SMUD will work with SVCE's marketing team to help drive customer traffic to the Concierge. If the customer volume or duration of interaction exceeds expectations, SMUD will first draw on budgeted use contingency funds to fund additional Concierge staff support.

The Concierge will provide the following customer response times:

- Contact center hours are 9am until 5pm, Monday through Friday, and voicemail will be available for after-hour calls. SMUD will provide a 60 second service level agreement for average speed of answer, and the current average is seven seconds. SMUD manages contacts in 150 languages, records all calls, provides random QA of calls, and offers robust call reporting.
- SMUD's average speed of answer service level agreement for Energy Advisors is 60 seconds, but the current actual speed is closer to 10 seconds. Energy Advisors will also monitor chats and will respond within 60 seconds.
- Energy Advisors will schedule virtual appointments for Technical Assistance and Electrification Plans at the convenience of the customer. Energy Specialists and Energy Experts will be on time for appointments.
- Energy Specialists will provide summaries of conversations and resources via email within two business days.
- Energy Experts will create Electrification Plans and schedule with customers to go over the Plan, answer any questions and make adjustments. Energy Experts will provide the Electrification Plan to the customer via email within two business days.

Customer Relationship Management

SMUD will build a Salesforce CRM to house Concierge-specific data, enable workflows, and produce comprehensive, actionable reports. SMUD will leverage its IT team's decades of experience building utility and Community Choice Aggregators CRMs, as well as its Market Research team to help deliver quality interfaces for employees that enable great customer

experiences.

Through the Concierge CRM, SMUD will record details of every interaction with customers so that any member of the team can have a thorough understanding of a particular customer's journey, where they are at in it, and how they can best help that customer with their next step.

When a customer calls in, an Energy Advisor will look to see if there is an existing service record for that customer. If there is, the Energy Advisor will be able to help the customer get to the appropriate point in their journey, with the right team member. Over time, SMUD will integrate relevant historical information about the customer into the Concierge CRM such as SVCE programs they have participated in and their rate code.

Example Concierge CRM fields include:

- Team member name
- Customer contact information
- Time of interaction
- Web form fields, if applicable
- Reason for call
- Topics covered
- Applications completed
- Programs referred
- Resources referred
- Technical assistance provided
- Electrification plan provided
- Additional information needed
- Issues
- Issue resolution
- Appointment scheduled
- Call back time scheduled
- Customer sentiment

The Concierge CRM will be built leveraging SMUD's existing CRM. SMUD will perform ongoing operations and maintenance on the Concierge CRM. SMUD's Energy Advisors will use their existing Salesforce licenses to access the Concierge CRM, and SVCE will be responsible for the costs of six additional Salesforce licenses to enable the Concierge. These licenses will be used by Energy Specialists, the Concierge Program Manager, SVCE, and additional staff as needed.

In parallel, SVCE will inform SMUD of its long-term vision for its own CRM that may be developed in-house, with SMUD's support, or by a separate third party. SMUD will build the Concierge CRM so that it can be migrated and/or repurposed to an SVCE owned CRM at a future date to minimize additional development costs.

In support of the Concierge CRM, SMUD's IT will leverage SVCE's DataHive platform as much as possible, but SVCE may need to provide SMUD with the PG&E 4013 files.

Future potential Concierge offerings

SVCE and SMUD may discuss expanding the Concierge offerings to include:

- Concierge support for SVCE's commercial customers\
- White-labeled SMUD proprietary tools white-labeled to be made available to SVCE, such as the Time Of Day Cost Estimator

Any additional services may be added to this Agreement through a written amendment signed by both Parties.

Exhibit B
Schedule of Performance

This schedule may be modified with the written approval of the Authority.

	Scope of Work	Start Date	End Date
Task #	Task Title		
0	Finalize contract and scope	05/26/23	05/31/23
1	Project management	05/26/23	08/27/2026
2	Develop implementation plan	05/26/23	06/30/23
3	Integrate Concierge with Existing Program Administration Structure	05/26/23	06/30/23
4	Develop user interface and utilize a CRM	05/26/23	08/28/23
5	Train concierge personnel	08/01/23	08/28/23
6	Develop marketing and communications plan	08/01/23	08/27/2026
7	Launch and manage concierge services	08/28/23	08/27/2026
8	Integrate with future turnkey installation program	08/28/23	08/27/2026
9	Evaluate program performance	08/28/23	08/27/2026
10	Contingency work	08/28/23	08/27/2026

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 eight hundred and ninety-two thousand fifty-nine dollars (\$892,059), 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.

	Scope of Work	SVCE Involvement/Milestone	Hours	Rate	3 Year Total
Task #	Task Title				
0	Finalize contract and scope		0		\$ -
	Resolve any contract exceptions noted in proposal	Facilitate resolution	0	160	\$ -
	Finalize scope of work for inclusion in contract	Negotiate and approve scope	0	160	\$ -
	Garner contract signatures	Garner signature	0	160	\$ -
1	Project management		162.00		\$ 27,480
	Prep for kick off meeting		2	160	\$ 320
	Identify and contact key participants in kick off meeting	Provide input into key participants	1	160	\$ 160
	Hold program kick off meeting	Attend kick off meeting	2	160	\$ 320
	Draft minutes and outcomes from kick off meeting	Provide feedback into minutes	1	160	\$ 160
	Prep for, hold and draft minutes for bi-weekly check in meeting	Attend bi-weekly meetings	156	170	\$ 26,520
2	Develop implementation plan		158.5		\$ 25,360
	Kick off advisory group engagement	Attend kick off meeting	1.5	160	\$ 240
	Develop advisory group questionnaire	Provide input into advisory group questionnaire	4	160	\$ 640
	Coordinate and consolidate advisory group feedback		4	160	\$ 640
	Draft advisory group feedback summary		1	160	\$ 160
	Send advisory group feedback summary		0.25	160	\$ 40
	Adjust advisory group feedback summary	Provide feedback into advisory group summary	1	160	\$ 160
	Finalize advisory group feedback summary	Approve advisory group summary	0.5	160	\$ 80
	Draft customer journey maps		12	160	\$ 1,920
	Send customer journey maps		0.25	160	\$ 40
	Adjust customer journey maps		2	160	\$ 320

	Finalize customer journey maps		0.5	160	\$ 80
	Draft electrification plan format		16	160	\$ 2,560
	Send electrification plan format		0.25	160	\$ 40
	Adjust electrification plan format		4	160	\$ 640
	Finalize electrification plan format		0.5	160	\$ 80
	Draft hotline and web interface implementation section		16	160	\$ 2,560
	Draft incentives layering assistance implementation section		16	160	\$ 2,560
	Draft technical assistance implementation section		16	160	\$ 2,560
	Draft electrification implementation section		16	160	\$ 2,560
	Draft program referrals implementation section		16	160	\$ 2,560
	Draft EM&V section		16	160	\$ 2,560
	Draft implementation plan		8	160	\$ 1,280
	Send draft to SVCE for review		0.25	160	\$ 40
	Adjust implementation plan	Provide feedback into draft plan	4	160	\$ 640
	Send draft to SVCE for review		0.5	160	\$ 80
	Finalize implementation plan	Approve draft plan	2	160	\$ 320
3	Integrate Concierge with Existing Program Administration Structure		45.75		\$ 7,320
	Draft existing programs integration section		4	160	\$ 640
	Send draft existing programs integration section		0.25	160	\$ 40
	Adjust draft existing programs integration section	Provide feedback into existing programs plan	1	160	\$ 160
	Finalize draft existing programs integration section	Approve existing programs plan	0.5	160	\$ 80
	Integrate with existing programs		40	160	\$ 6,400
4	Develop use interface and utilize a CRM		802.25		\$ 128,360
	Develop preliminary hotline		109	160	\$ 17,440
	Develop preliminary web experience		213	160	\$ 34,080
	Develop preliminary CRM		356	160	\$ 56,960
	Provide live demonstration of preliminary UI for hotline and web		2	160	\$ 320
	Adjust preliminary UI for hotline and web	Provide feedback into preliminary hotline and web	4	160	\$ 640
	Finalize preliminary UI for hotline and web	Approve preliminary hotline and web	1	160	\$ 160
	Provide live demonstration of UI for CRM		2	160	\$ 320
	Adjust UI for CRM	Provide feedback into CRM	4	160	\$ 640
	Finalize UI for CRM	Approve CRM	1	160	\$ 160
	Develop UI for hotline and web research plan		16	160	\$ 2,560
	Send UI for hotline and web research plan		0.25	160	\$ 40

	Adjust UI for hotline and web research plan	Provide feedback into research plan	2	160	\$ 320
	Finalize UI for hotline and web research plan	Approve research plan	0.5	160	\$ 80
	Draft usability script		32	160	\$ 5,120
	Send usability script		0.25	160	\$ 40
	Adjust usability script	Provide feedback into usability script	2	160	\$ 320
	Finalize usability script	Approve usability script	0.5	160	\$ 80
	Program usability script		6	160	\$ 960
	Initiate soft launch		4	160	\$ 640
	Modify script		4	160	\$ 640
	Initiate full launch		6	160	\$ 960
	Review recordings		8	160	\$ 1,280
	Draft usability research summary		16	160	\$ 2,560
	Send usability research summary		0.25	160	\$ 40
	Adjust usability research summary	Provide feedback into usability research summary	1	160	\$ 160
	Finalize usability research summary	Approve usability research summary	0.5	160	\$ 80
	Update UI for hotline and web		8	160	\$ 1,280
	Provide live demonstration of final UI for hotline and web	Approve final hotline and web	3	160	\$ 480
5	Train concierge personnel		757.50		\$ 106,800
	Develop training plan		48	160	\$ 7,680
	Send training plan		0.75	160	\$ 120
	Adjust training plan	Provide feedback into training plan	6	160	\$ 960
	Finalize training plan	Approve training plan	1.5	160	\$ 240
	Develop training materials		288	160	\$ 46,080
	Be trained (8 hours)		360	120	\$ 43,200
	Deliver training		36	160	\$ 5,760
	Draft training summary report		12	160	\$ 1,920
	Send training summary report		0.75	160	\$ 120
	Adjust training summary report	Provide feedback into training summary report	3	160	\$ 480
	Finalize training summary report	Approve training summary report	1.5	160	\$ 240
6	Develop marketing and communications plan		306.75		\$ 51,960
	Draft marketing and communication plan		16	160	\$ 2,560
	Send marketing and communication plan		0.25	160	\$ 40
	Adjust marketing and communication plan	Provide feedback into marketing plan	2	160	\$ 320
	Finalize marketing and communication plan	Approve marketing plan	0.5	160	\$ 80
	Implement marketing tactics		288	170	\$ 48,960
7	Launch and manage concierge services		2872		\$ 359,332

	Deploy hotline		16	160	\$ 2,560
	Deploy web		16	160	\$ 2,560
	Update web		36	160	\$ 5,760
	Deploy CRM		16	160	\$ 2,560
	Draft report format		8	160	\$ 1,280
	Send report format		0.25	160	\$ 40
	Adjust report format	Provide feedback into report	2	160	\$ 320
	Finalize report format	Approve report	0.5	160	\$ 80
	Prepare and send weekly reports		39	170	\$ 6,630
	Answer questions/provide ad hoc reporting		19.5	170	\$ 3,315
	Draft customer survey		8	160	\$ 1,280
	Send customer survey		0.25	160	\$ 40
	Adjust customer survey	Provide feedback into customer survey	2	160	\$ 320
	Finalize customer survey	Approve customer survey	0.5	160	\$ 80
	Prepare and send weekly surveys		39	170	\$ 6,630
	Take hotline calls year 1 (1000, 10 mins)		200	110	\$ 22,000
	Take incentive layering calls year 1 (350, 10 min)		58	110	\$ 6,417
	Take technical assistance calls year 1 (350, 30 min)		175	120	\$ 21,000
	Take electrification plan calls year 1 (100, 60 min)		100	120	\$ 12,000
	Prepare electrification plans year 1 (100, 120 min)		200	120	\$ 24,000
	Take hotline calls year 2 (1200)		240	115	\$ 27,600
	Take incentive layering calls year 2 (420)		70	115	\$ 8,050
	Take technical assistance calls year 2 (420)		210	125	\$ 26,250
	Take electrification plan calls year 2 (120)		120	125	\$ 15,000
	Prepare electrification plans year 2 (120)		240	125	\$ 30,000
	Take hotline calls year 3 (1440)		288	120	\$ 34,560
	Take incentive layering calls year 3 (504)		84	120	\$ 10,080
	Take technical assistance calls year 3 (504)		252	130	\$ 32,760
	Take electrification plan calls year 3 (144)		144	130	\$ 18,720
	Prepare electrification plans year 3 (144)		288	130	\$ 37,440
8	Integrate with future turnkey installation program		10.75		\$ 1,828
	Draft turnkey program implementation plan		8	170	\$ 1,360
	Send turnkey program implementation plan		0.25	170	\$ 43
	Adjust turnkey program implementation plan		2	170	\$ 340

	Finalize turnkey program implementation plan		0.5	170	\$ 85
9	Evaluate program performance		24.00		\$ 4,080
	Provide data reports to 3rd party EM&V consultant for program evaluation		12	170	\$ 2,040
	Answer questions/provide ad hoc reporting		12	170	\$ 2,040
10	Contingency work		762.00		\$ 129,540
	Scale service delivery		96	170	\$ 16,320
	Customize scope to future program offerings		96	170	\$ 16,320
	Other tasks as assigned		570	170	\$ 96,900
	Total		5,902		\$ 842,059
	Licenses				\$ 50,000
					\$ 892,059

Budget Summary

Concierge Total Cost							
	Set Up	Admin	Hotline	Incentives Layering	Technical Assistance	Electrification Plans	
1	\$ 236,227	\$ 96,025	\$ 22,000	\$ 6,417	\$ 21,000	\$ 36,000	
2	\$ 16,667	\$ 117,053	\$ 27,600	\$ 8,050	\$ 26,250	\$ 45,000	
3	\$ 16,667	\$ 83,545	\$ 34,560	\$ 10,080	\$ 32,760	\$ 56,160	
Total	\$ 269,560	\$ 296,623	\$ 84,160	\$ 24,547	\$ 80,010	\$ 137,160	\$ 892,059

Rates

Title	Hourly Year 1	Hourly Year 2	Hourly Year 3
Program Manager	160	170	180
Manager	160	170	180
IT Project Manager	160	170	180
IT Developer	160	170	180
Marketing Specialist	160	170	180
Market Research Specialist	160	170	180
Trainer	160	170	180
Energy Advisor	110	115	120
Energy Specialist	120	125	130
Energy Expert	120	125	130

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 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 1e

Item 1e: Authorize the Chief Executive Officer to Execute an Amendment to the Agreement with CLEAResult Consulting, Inc. for Electric Vehicle Charging Technical Assistance to Extend the Term of the Agreement for 15 months and Increase Compensation by \$225,000

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy
Hannah Gustafson, Senior Community Programs Specialist

Date: 6/14/2023

RECOMMENDATION

Staff recommends that the Board authorize the Chief Executive Officer to execute an amendment to the agreement with CLEAResult Consulting, Inc. ("CLEAResult") to extend the term of the agreement for 15 months until December 31, 2024, and increase compensation by \$225,000 for a new not-to-exceed amount of \$725,000. This amendment and extension will allow SVCE to continue providing electric vehicle charging technical assistance to multifamily and small/medium business customers.

BACKGROUND

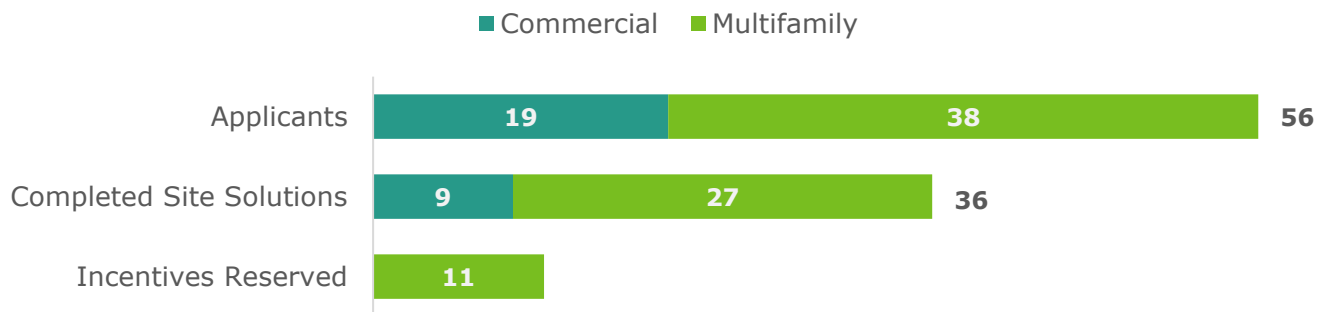
In April 2020, the SVCE Board of Directors approved the original agreement with CLEAResult to administer an electric vehicle infrastructure technical assistance program for multifamily and small/medium business customers. The original contract term was for 40.5 months, ending on September 30, 2023 with a not-to-exceed budget of \$500,000. Funding for this program originated from a 2019 Board-approved allocation of \$8 million for Electric Vehicle Infrastructure ("EVI") programs. CLEAResult was selected by SVCE to administer this program after leveraging a similarly scoped competitive solicitation process from Peninsula Clean Energy in 2019.

For the past three years, CLEAResult has administered SVCE's FutureFit Assist EV Charging Program, providing no-cost technical assistance to eligible customers interested in installing EV charging (Level 1, smart Level 1, and Level 2 connectors). The program provides a full range of support for customers planning an EV charging installation, including on-site assessments, project design, contractor bid support, and assistance with applying for incentives. The program is designed to provide an entry point and help guide multifamily and small business customers with a greater need for support through the often-complex project planning and installation process.

ANALYSIS & DISCUSSION

FutureFit Assist EV Charging provides high-touch support for customers navigating EV charging projects. To date, the program has received 57 applications and completed 36 custom site solutions. At least 6 multifamily participants have since reserved incentives through SVCE's EV Charging Installation Incentive Program ("CHIIP") and are in the process of installing charging. Another 5 participants currently have reserved SVCE funding through the California Electric Vehicle Incentive Program ("CALeVIP") for their installations. The remaining properties are still considering how to proceed or ran into barriers that prevent them from moving forward – SVCE's program continues to offer support to try to spur action.

FutureFit Assist EV Charging Participant Pipeline
April 2020 to May 2023



Offering no-cost technical assistance is valuable for harder-to-reach properties to help overcome known barriers to EVI adoption. Multifamily and small business owners benefit from a neutral third-party expert service that can help them make informed decisions about a relatively new and rapidly evolving field. CLEAResult also provides customers with guidance on load management technology and solutions that can lower project costs, are friendlier to the grid, and maximize existing site capacity for charging and other future electrification projects. For a variety of reasons, EV charging installation projects often face long timelines. This program provides customers with technical support continuity throughout a project planning process, and extending this contract will extend these services for projects with plans currently underway or about to begin.

Additionally, this program provides a pathway for multifamily properties to reserve incentives of up to \$50,000 or 75% of total project costs from SVCE's CHIIP program. Paired together, staff believes the technical assistance and incentive programs provide a supportive pathway and financial motivation for property owners to follow through with their projects. SVCE staff, in collaboration with CLEAResult staff, have learned much about barriers and solutions for expanding EV charging, particularly for multifamily properties. By extending this program another 15 months, through CY2024, this program can continue to build upon these lessons to ramp up more effective marketing and outreach to increase participation and ultimately EV charging installations available to SVCE multifamily residents. In the coming year, SVCE will continue to monitor the progress through final installation at participating properties and evaluate the effectiveness of offering both technical assistance and incentives.

The cost estimate for extending the CLEAResult contract through December 31, 2024 is \$225,000. CLEAResult's hourly rates have increased by 20% for the extended term based on inflation and increased labor costs since 2020. The scope of work will remain the same, with a focus on continuing to provide support for current and future project site assessments, site designs, contractor bid support, and incentive application support through installation. Throughout the additional 15-month extension, staff will continue to evaluate customer needs and will determine next steps on current or new programs to continue facilitating charger installations.

To extend the contract for 15 additional months, staff requests the Board of Directors approve the amendment to the existing CLEAResult agreement, increasing the current not-to-exceed total of \$500,000 to a new total of \$725,000 and amending the end date to December 31, 2024.

STRATEGIC PLAN

As detailed in SVCE's 2022 Strategic Plan, extending the FutureFit Assist EV Charging program helps achieve Goal 10: Coordinate development of decarbonization and resilience strategy, lead design of local policy, and design and deploy programs. Specifically, continuing this program supports Goal 10 Measure 2, fulfilling a key program detailed in SVCE's Electric Vehicle Infrastructure Joint Action Plan to accelerate transportation electrification and decarbonization in SVCE territory.

Agenda Item: 1e**Agenda Date: 6/14/2023**

ALTERNATIVE

Maintain the existing contract for the remainder of the contract period, ending September 30th, 2023.

Technical assistance for EV charging would no longer be available to SVCE customers after this date. Staff plans to explore a new iteration of these services in future years, based on learnings from this program, but due to the timing there would be a gap in program availability.

FISCAL IMPACT

Approval of the amendment with CLEAResult will have no incremental fiscal impact. The \$225,000 additional budget for this program would be funded through currently unallocated funds that the Board has already set aside for programs spending in previous budget cycles.

ATTACHMENTS

1. Amendment to CLEAResult Agreement
2. CLEAResult Agreement

FIRST AMENDMENT TO AGREEMENT WITH CLEARESLT CONSULTING, INC.

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and CLEARESLT CONSULTING, INC. entered into that certain agreement entitled “AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND CLEARESLT CONSULTING INC. FOR ELECTRIC VEHICLE TECHNICAL ASSISTANCE”, effective on April 15, 2020, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and CLEARESLT CONSULTING, INC. 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. Section 1 of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on Effective Date, and shall terminate on December 31, 2024, unless terminated earlier as set forth herein.

2. Section 3 of the 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 Seven Hundred Twenty-Five Thousand Dollars (\$725,000.00) 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 of the Original Agreement is deleted in its entirety and replaced with the new Exhibit C COMPENSATION as shown in Attachment 1.

4. This Amendment shall be effective on October 1, 2023.

4. 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.

5. 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

Justin Zagunis, Director of Decarbonization Programs and Policy

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
CLEARRESULT CONSULTING, INC.

By: _____
Name: _____
Title: _____
Date: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _____

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 seven hundred and twenty five thousand dollars (\$725,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensations set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Task Budgets

Task	Original Agreement Budget	Amended Agreement Budget
Term	4/15/20-9/30/23	10/1/23-12/31/24
1. Administrative Tasks	\$50,000	\$21,687
2. Program Tasks for New and Existing Building Charging Technical Assistance	\$370,000	\$168,614
2.1. Develop Program Strategy	\$10,000	\$4,337
2.2. Prepare Program Outreach and Educational Campaign	\$60,000	\$24,217
2.3-4. Outreach, Education and Onboarding	\$70,000	\$30,362
2.5-6. Site Screening & Power Parking Assessments	\$180,000	\$78,072
2.7-8. Installation Contractor, Bid Support, & Post Recommendation	\$50,000	\$31,627
3. Program Tasks for Fast Charge Systems	\$0	\$0
4. Additional Support and Operational Integration	\$80,000	\$34,699
Total	\$500,000	\$225,000
Total Not-to-Exceed	\$500,000	\$725,000

1. Payment Schedule

Consultant shall bill for Services on a time and materials basis at the rates shown below. Direct expenses will be billed at cost.

1. Rates

Role	Original Hourly Rate	Amended Hourly Rate
Program Director	\$206	\$240
Operations Manager	\$120	\$143
Sr. Consultant	\$139	\$162
Sr. Electrical Engineer	\$160	\$187
Energy Engineer V	\$160	\$187
Energy Engineer II	\$115	\$135

Account Manager	\$95	\$112
Sr. Energy Auditor	\$78	\$96
Marketing Manager	\$112	\$126
Creative Director	\$165	\$201
Graphic Designer	\$80	\$99
Copy Editor	\$84	\$102
Web Developer	\$130	\$161
IT Developer	\$152	\$188

Additional roles and rates may be added to the table with prior written approval of the Authority.

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.

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
CLEARRESULT CONSULTING INC.
FOR
ELECTRIC VEHICLE TECHNICAL ASSISTANCE**

THIS AGREEMENT ("Agreement"), is entered into this 15th day of April, 2020, (the "Effective Date") by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and CLEAResult Consulting, Inc, a Texas corporation whose address is 4301 Westbank Drive, Building A, Suite 300, Austin, TX 78746 (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 electric vehicle technical assistance 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 Effective Date, 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 Five Hundred Thousand Dollars (\$500,000.00) 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 shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. **General Indemnification.** To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify Authority and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those Authority agents serving as independent contractors in the role of Authority officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to any acts, errors, omissions, negligence, or misconduct of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including, without limitation, Liabilities arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (c) any destruction, or unauthorized access, use, or theft of Authority data (collectively, "cyber theft"); (d) any construction defects and/or product liability; (e) any product or service allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right or, (f) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. **Indemnification Procedures.** Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities, with counsel reasonably acceptable to Indemnitees, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually and reasonably incurred in connection with such defense. Promptly after receipt by Authority of a threat, notice, or filing of any action or actions against an Indemnitee in connection with any Liabilities, Authority shall give notice thereof to Consultant, provided that failure to give or delay in giving such notice shall not relieve Consultant of any liability it may have to the Indemnitee except to the extent that Consultant demonstrates that the defense of the action or

actions is prejudiced thereby. Consultant shall reimburse the Indemnitees for any and all reasonable legal expenses and costs incurred by Indemnitees in connection therewith, except that Consultant shall not reimburse the Indemnities for any costs relating to legal counsel that Indemnitees retain independently.

C. Third-Party Beneficiaries. Nothing, express or implied, in this Agreement is intended to benefit, or to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor Indemnitees.

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. Consultant shall provide thirty (30) days' advance written notice to Authority of any pending change in the limits of liability or of any cancellation or material modification of any insurance coverage. 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 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, upon reasonable notice, escorted 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. Joanne O'Neill (Consultant Representative") shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **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 provisions set forth in Exhibit "E," attached hereto and incorporated herein by this reference.

E. Authority covenants that all proprietary and confidential business information and trade secrets of Consultant (collectively "Confidential Information") received by Authority in connection with this Agreement and marked as "Confidential" or "Proprietary" are deemed confidential and shall not be disclosed or released by Authority without prior written authorization by Consultant, except to the extent required by applicable law, including the California Public Records Act (Cal. Gov't Code §§ 6250 et seq.). If Authority receives a request for Confidential Information pursuant to applicable law, including the California Public Records Act, then Authority will notify Consultant of such request in order to provide a reasonable opportunity for Consultant to object to such disclosure and, at Consultant's expense, seek protection from a court of competent jurisdiction. If Consultant fails to seek and obtain protection from disclosure, and Authority determines that it is required to disclose such information pursuant to applicable law, Authority may disclose without breach of this Agreement the portion of the Confidential Information that was requested.

F. The parties' 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 290
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:
CLEAResult Consulting, Inc.
100 SW Main St Suite 1500
Portland, OR 97204
Attention: Legal Department

19. **TERMINATION**

In the event Consultant or Authority fail or refuse to perform any of the provisions hereof at the time and in the manner required hereunder, that party shall be deemed in default in the performance of this Agreement. If that party fails to cure the default within the time specified (which shall be not less than 20 days) and according to the requirements set forth in the other party's written notice of default, and in addition to any other remedy available to the other party by law, the other party may terminate the Agreement by giving the defaulting party 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 thirty (30) 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. 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 or by Consultant 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, pandemic, 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**

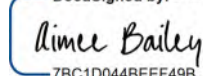
This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

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.

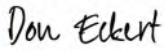
IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

RECOMMENDED FOR APPROVAL

Aimee Bailey


Aimee Bailey
Director of Decarbonization and Grid Innovation

RECOMMENDED FOR APPROVAL

DocuSigned by:

10C84C9C59134BD...
Don Eckert
Director of Finance & Administration


CONSULTANT NAME

CLEARresult Consulting, Inc.

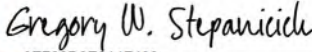
DocuSigned by:

By: EB3EE43072C946F...
Name: Tim Mahler
Title: Senior Vice President
Date: 4/10/2020

SILICON VALLEY CLEAN ENERGY
AUTHORITY

A Joint Powers Authority

DocuSigned by:

By: 5CA04B9AC4C24C3...
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 4/10/2020

APPROVED AS TO FORM:

DocuSigned by:

9E728D9F814F493...
Counsel for Authority

ATTEST:

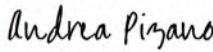
DocuSigned by:

D00297338B994BA...
Authority Clerk

Exhibit A

Scope of Services

1. Administrative Tasks

Consultant shall provide the following:

1.1 Kickoff Meeting

Participate in a kickoff meeting with Authority to review objectives, budget, timeline, administrative processes and contract at a mutually determined time.

1.2 Monthly Progress Report and Call

Provide a short monthly progress report (ideally not more than 1 page, with tables of specific customer information as necessary) and associated call with the designated Authority contract administrator by the 5th of the following month. This report will outline key project elements defined during program strategy development, which may include individual project and overall program timelines, forecasted ports per client, specific list of clients, status of installations, progress (e.g., ‘progress to target’), and challenges encountered; a description of additional funding or resources secured; changes to maintained list of construction contractors and relevant customer feedback related to installation; a summary of project pipeline status from lead generation (marketing & outreach activities) to completed projects, and objectives for the following month. Major supplementary documentation developed in the course of work must be submitted with the Progress Report or its online repository as agreed with the Authority contract administrator. This supplementary documentation may include technical designs, permits, equipment specifications, photographs of installed equipment, and any materials developed for partner use as deemed necessary. Authority may request ad-hoc progress reports at any time to ensure accuracy in progress reporting for public comments or reporting to the Authority Board of Directors.

The progress report should also include a high-level budget status that covers any expense issues not clear on the monthly invoice. Total budget spent-to-date and total remaining budget should be included as well as any issues encountered or anticipated.

The progress report shall also provide an opportunity for immediate, continuous improvement of the program strategy. Consultant shall note any recommendations for addressing critical issues or opportunities that should not be left until the six-month checkpoint meetings.

1.3 Checkpoint Meeting

Participate at project review meetings with the designated Authority contract administrator anticipated to occur six months after the contract start and every six months thereafter, to review project progress (each, a “Checkpoint Meeting”). The Checkpoint Meeting will be used to evaluate progress and the necessity of any course corrections. Consultant will

include a short summary of lessons learned at each of these meetings, either as a written memo or a PowerPoint presentation. The summary should include the recommendations for course corrections, observed trends in the market and identification of common/critical barriers and solutions. Any mutually agreed upon course corrections will be incorporated into the Program Strategy Document, with particular attention to ensuring that actions incorporate lessons learned.

1.4 Final Report

Provide a final report (appropriate for public distribution) at the conclusion of the program or contract synthesizing the issued 6-month reports (plus any remaining period) as detailed in 1.3 into a final report. This report will clearly synthesize all learnings gleaned from engagement with all program entities (participants, applicants, vendors, etc.). The focus shall be on summarizing the common and major barriers for charger deployment and utilization, along with any approaches that were effective in resolving them. A draft report will be provided in advance to Authority for review.

Deliverables:

1. DRAFT Final Report
2. Final Report

2. Program Tasks for New and Existing Building Charging Technical Assistance

Consultant shall provide the following tasks for Level 1, Level 2, and L2 ‘powersharing’ configurations:

2.1 Develop Program Strategy

In collaboration with Authority, Consultant shall develop a strategy document for the first year (“Program Strategy”). The Program Strategy will summarize and prioritize key tactics as mutually determined including cost containment methods, site design approach, high level marketing approach, energy efficiency, leveraging non-Authority funding sources and other options which may be identified. The Program Strategy will emphasize a high-touch, concierge service to targeted customers, rather than a broad market appeal. The Program Strategy will incorporate a quarterly activity plan to spread funding out across the duration of the contract, along with processes and tracking to allow for closing the program early or adding new funding based on customer uptake and actual expenditures.

A core purpose of the Program Strategy is to finalize the definitions of the Authority’s target property types (“Target Sites”). This will dictate what kind of sites are targeted by the consultant for concierge support and which will receive more limited support when self-identifying. The Authority’s focus is on supporting market transformation in the small/medium workplaces and multi-unit dwellings (“MUDs”), while scaling up to reach as many residents as possible.

The Program Strategy will include a description of the Target Sites, key considerations for each site type, geographic distribution of sites within the Authority's territory, sociodemographic/language considerations, and the recommended outreach strategies for each site type (including variations by geography). The strategy should be aligned with the quarterly activity plan. The Program Strategy will also identify project targets by quarter and overall (e.g. number of Power Parking Assessments, outreach efforts performed, site hosts engaged) to allow for ongoing progress tracking and revisions.

Deliverable: Program Strategy Document

2.2 Prepare Program Outreach and Educational Campaign

Consultant shall prepare an outreach and educational campaign plan addressing each Target Site market segment(s) to solicit applications from a viable pool of potential Target Site participants. The campaign plan should be tailored as necessary to each market segment. The plan will detail the outreach channels for the outreach campaign including phone calls, email, direct mail, in-person communications, owned media, earned media, paid media, participation at conferences, workshops or stakeholder forums and other tactics as deemed appropriate

The plan will be provided to the Authority team for review and comment before final refinement. The plan will focus on high-touch outreach and education to ensure information and services lead to action, not just improved knowledge. When major new activities are planned such as new media, the plan will be updated with detail on the new plans.

The messaging and materials will be designed in a format and level of detail appropriate for the selected audiences, with an overarching intent of providing a simple and clear path to successful installation of electric vehicle (EV) charging.

The educational component will consist of the following elements, as mutually determined by Authority and Consultant:

1. Introduction/ short overview of electric vehicles;
2. EV Charging Infrastructure (CI) benefits for Target Site managers, owners and tenants;
3. Current estimates and projected future demand timeline for EVs;
4. Charging levels (Levels 1 and 2, plus Direct Current Fast Charger (DCFC)), time to charge, energy fees (existing and upcoming tariffs);
5. Electrical infrastructure requirements;
6. Charging station business models (i.e. amenity versus revenue-generating, site-owned versus vendor-owned) and consultant/technology overview;
7. Potential for make-ready(s);
8. Parking facility considerations, including Americans with Disabilities Act (ADA) requirements;
9. Construction considerations;

10. Existing EV charging incentive programs (Authority's, Pacific Gas & Electric's, and other as-yet-to-be-identified programs), which Consultant shall track and summarize for use by participants and on Authority's webpages;
11. EV charging user and owner guidance based on proposed charger type, count and location;
12. Assistance with property site policies, if needed;
13. Metering options, utility rates and demand charges, along with pricing policies to manage those three components;
14. Load shaping and demand response opportunities, benefits, and requirements; general information and details of Authority programs as they become available

In all messaging and materials, Consultant shall present the Authority as the program provider, including by complying with the following:

1. Consultant shall use Authority design guidelines and templates;
2. All materials will be reviewed and approved by Authority prior to use;
3. In all communications, the program will be represented as an Authority program, including through the use of the Authority's approved logo. Consultant may also use its logo as the consulting partner of the Authority program. Authority, at its discretion, may provide a program name.
4. Initial outreach and broadcast, and template communications in any form, will be coordinated with Authority. Authority may, at its discretion, participate in any/all meetings as part of the program.

Deliverables:

1. Messaging and Marketing Plan DRAFT
2. Messaging and Marketing Plan FINAL
3. Messaging and Marketing Plan Update(s)
4. Website content
5. Customer Collateral (including Fact Sheets, Case Studies, etc.)

2.3 Outreach, Education and Onboarding, Pre-Identified Sites

1. Consultant shall:
 - A. Determine and contact appropriate individuals (decision makers) from Authority pre-identified lists, such as the Authority's Regional EV Leadership Recognition partners, and other lists consultant can make available to Authority by market segment(s) with a special emphasis on Target Sites.
 - B. Educate decision makers regarding program and onboard sites via on-line forms and associated customer relationship management (CRM) platform
2. Outreach, Education, and Onboarding Operations

- A. Consultant shall conduct outbound marketing call support to predesignated and preapproved Authority customers, utilizing the messaging as determined in the Messaging and Marketing Plan.
- B. Consultant shall provide outbound call scripts for Authority review and approval prior to implementation.
- C. Consultant shall participate in local events where Target Sites are likely to be represented, engaging their interest in program services through presentations and direct interaction

Deliverable: Ongoing outreach and education to pre-identified decision makers

2.4 Education and Onboarding, Self-Identified Sites

Consultant shall provide:

Through their own outreach to the program and Consultant or through referrals from Authority via its other related programs, educate self-identified potential sites regarding this program (or any other relevant programs), following the items outlined in 2.3. As directed by Authority, Consultant shall process these sites along to site screening and recommendation, Power Parking Assessment, or other tasks outlined in this Agreement. Level of assistance should be proportional to property owner scale, site location, clientele and as determined by the Program Strategy (2.1).

Deliverable: Ongoing outreach and education to target customers

2.5 Site Screening & Recommendations

Consultant shall provide:

1. Conduct coarse screening for potential participation in Authority and non-Authority programs, if available.
2. Invite Authority staff to initial decision maker meetings and other meetings
3. As appropriate, further educate the decision maker regarding non-Authority programs outlining the economic benefits with the objective of their participation in non-Authority incentive programs
4. Depending on the number of sites and associated complexity, schedule site walk(s) with the decision maker/designee and a Power Parking Assessment (Section 2.6 below). Should there be a large number of sites under single control, work with the decision maker to develop an appropriate Power-Parking Assessment plan that may / may not encompass all of the sites.
5. Keep Authority informed of activities with customers.

Deliverable: Ongoing screening and recommendations to target customers

2.6 Power Parking Assessment

Consultant shall provide a “Power Parking Assessment” with the objective of providing Target Sites with a simple and clear path to successful installation of EV charging infrastructure. Preparation of the Power Parking Assessment shall include the following steps:

1. Conduct site walk(s) with the decision maker or their designee.
2. Obtain site plans or photos noting the site’s parking lot location(s) and sizes and electrical room locations.
3. Evaluate the site’s potential spare electrical capacity, considering the maximum concurrent load and spare space for additional breakers (and their size) from each applicable panel and potentially recommend load study(s). Workforce/labor requirements for the load study(s) may be stipulated by Authority with reasonable notice.
4. Assess the potential for least expensive / optimized deployment for the site owner, manager and tenants for Level 2 and/or Level 1 with power-sharing options as appropriate. The assessment may also include alternatives to optimize site owner preferences (higher charging rates), planning for future growth (futureproofing), or other scenarios.
5. As applicable, identify, integrate and explain applicable American with Disabilities Act (ADA) requirements.
6. Incorporate local permitting and National Electrical Code (NEC) requirements into all assessments and installation scenarios (decision maker and their chosen installation contractor will be responsible for code compliance and permit management).
7. Based on the above, prepare a Power Parking Assessment document detailing:
 1. Recommendations for Level 1 and/or Level 2 EV Service Equipment (EVSE), plus any make-ready.
 2. The proposed parking/ EVSE conceptual drawing, including any ADA impacts.
 3. Costs broken down by make-ready, EVSE and installation, networking fees, etc.
 4. Summary of estimated costs, integrating Authority and other incentives.
 5. Estimated maximum power demand based on cumulative maximum charger draw and expected weekend and weekday hourly load based on charger count and type.
 6. A summary of the impact of the EV commercial rate on the decision maker’s installation.
 7. Best practices and EVSE management policies, such as pricing, access controls, tenant or user management, charging management.
 8. An illustration of potential revenue using one or more sample charger loads and pricing scenarios.

9. As appropriate, a recommendation for participation in the California Electric Vehicle Infrastructure Project (CALeVIP), Bay Area Air Quality Management District grants, and/or other programs as available.
8. Submit the draft to Authority for review and potential feedback. If Consultant does not receive feedback from Authority within 3 business days, Consultant may proceed.
9. Review the assessment with the property decision maker.

The Power Parking Assessment is not required to include:

1. Line drawings
2. Any construction
3. Permits
4. Equipment acquisition

Deliverable: Power Parking Assessment for decision makers that commit to participate

2.7 Installation Contractor & Bid Support

Consultant shall provide or support, as defined below, the following:

1. Provide Contractor Referrals:
 1. Create and manage a list of contractors who have experience with EVSE installation. Qualification for contractor list shall be done by Consultant, with qualifications for inclusion to be determined but including at least expectations on data sharing.
 2. Provide decision maker with the contractor list and recommended process for requesting and reviewing bids.
 3. Collect decision maker feedback on the installation process and data from contractors to identify common barriers and include in regular reporting to the Authority.
 4. Consultant shall act without bias towards any contractors and in the best interest of the decision maker.
2. Project Bid Management:
 1. Provide decision maker with reviews and technical assessment of bids and advising on bid selection.
 2. Provide decision makers advice on project change-order(s) for accuracy (additional site visits are not required).
 3. Provide documentation produced in Power Parking Assessment to decision maker in a form decision maker can readily provide to selected contractor for use in permit submission.
 4. Consultant shall act without bias towards any contractors and in the best interest of the decision maker.
3. Disclaimer:
 1. Consultant agrees to include a disclaimer of SVCE liability in communications with decision makers, as directed by SVCE. Such disclaimer shall be substantially similar to the following, subject to SVCE's right to revise: "Silicon Valley Clean Energy

provides this Program as a resource for customers. 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 associated with this Program. 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.”

Deliverables:

1. List of installation contractors and ongoing qualification/management
2. Ongoing bid management consultation

2.8 Post-Recommendation Management

1. Consultant shall assist site host with preparation of a CALeVIP, or other identified charging infrastructure incentive program, project application. Upon project completion, Consultant shall facilitate document submission to verify project completion and incentive receipt. The consultant shall not be responsible for submitting the application on behalf of the site applicant.
2. Consultant will develop and utilize processes to track and record information on the EVSE installation progress, and include that information in reporting to Authority. The following information will be tracked and reported to the extent Consultant is able to obtain the information directly or from decision makers and contractors:
 1. Duration of installation activities.
 2. Common permitting challenges and length of permitting process.
3. In addition to tracking and reporting, on an as needed basis, Consultant will provide decision makers support with issues such as local permitting
4. Upon installation of EVSE hardware, the Consultant shall:
 1. Collect all relevant and necessary EVSE information (e.g., serial numbers) to enable station utilization data collection for such purposes as Low Carbon Fuel Standard credits, while avoiding to the extent possible duplication of data collected via the incentive program.
 2. Assist in engagement with Authority load shaping program, regardless if program is active or not; the consultant is in no way responsible for enrollment, participation management, or program delivery.

Deliverables:

1. Ongoing construction tracking
2. Documentation of permitting issues
3. Ongoing assistance with incentive applications
4. Post-installation EVSE data information

3. Program Tasks For Fast Charge Systems

Consultant shall provide the following services:

As requested by third-party DCFC providers and approved by Authority, provide DCFC providers with support/troubleshooting with DCFC issues, such as local property manager approvals, permitting, land use, utility interconnection, etc. Consultant support/troubleshooting will not include detailed technical analysis of any type (engineering power analysis, circuit requirements, etc.).

Engage with DCFC developers to identify hurdles to station deployment in Authority service territory, compile issues for Authority review, and assist DCFC developers, as directed by Authority.

Deliverables:

1. Ongoing DCFC facilitation
2. Issues list updated as issues are identified in the course of the DCFC facilitation

4. Additional Support and Operational Integration

Consultant shall provide the following services:

4.1 EV Charging Incentive Programs

Consultant will monitor available funding sources for EV charging projects that are potentially applicable to Authority decision makers and report those options to Authority. Consultant will monitor and share opportunities for Authority to pursue additional funding sources (e.g. Bay Area Air Quality Management District, California Energy Commission, California Air Resources Board) to add resources to Authority's service territory. Authority may request technical assistance from Consultant in completing an application for a funding source so long as the effort reasonably aligns with existing Consultant tasks in this Agreement.

Deliverables:

1. Quarterly memo identifying incentive program availability for decision makers
2. Quarterly memo identifying existing and upcoming funding sources for Authority and Authority's service territory.
3. Technical assistance with Authority funding applications, as requested by Authority.

4.2 Data Integration

Consultant will assist with the following:

1. Assist to develop requirements for Authority's data tracking system(s) integration
2. Implement required integrations on the Consultant CRM
3. Execute tests in coordination with Authority to ensure data transfers operate successfully
4. Transfer all data from Consultant CRM to Authority system(s) on a continuous basis as mutually determined, but not less than weekly. Transfers shall include the following data:

1. Decision makers approached, the outreach method, date of outreach, result of outreach;
2. General site information (e.g., address, primary contacts, contact information);
3. All information collected in the Power Parking Assessment;
4. Post-recommendation management information (e.g., permit information, construction timeline, project issues encountered);
5. Details on bids, project outcomes (including costs), and actual equipment deployed.

Deliverables:

1. Authority data tracking system(s) requirements
2. Software integration
3. Ongoing data transfer

4.3 Customer Service Operations

Consultant shall provide the following services related to customer service:

1. In-bound customer service call support during normal business hours, 9am – 5pm pacific time, Monday through Friday excluding federal holidays, for customer inquiries.
2. Calls will route to members of the Consultant program team, who shall be trained to respond to questions about the program including services offered, incentives available, processes for technical assistance and rebates.
3. At all times the program and its communications will be presented as an Authority program.
4. Consultant operations will be integrated with Authority customer service operations, to the degree feasible, to provide as seamless a customer experience as possible.
5. Calls unrelated to the EV charging program will be routed to appropriate contacts, to be mutually identified with the Authority.

Deliverables:

1. Customer service integration with Authority customer service operations
2. Ongoing customer service operations

4.4 Case Study Development

As requested by Authority, Consultant shall support the creation of case studies. These case studies may be based on existing EV charger deployment or new deployment supported by this program. Case studies will support the overall education and outreach efforts and are intended to be shared publicly.

These case studies will include relevant material on the technical aspects of projects, along with anecdotal, personal stories. Authority may request Consultant's support in developing application documents that gather information of interest. Authority may also request Consultant's support in following up on any necessary interviews or other data gathering to support the case studies. Authority and Consultant shall mutually agree on roles and responsibilities associated with developing case studies as a part of the Messaging and Marketing Plan created in 2.2.

Authority will support all outreach and will review and co-develop applications or interview questions. Authority anticipates no more than 10 case studies across various Target Site types. Case studies will be simple and easy to understand – likely no more than 2 pages in length.

Deliverables: Information collection and other support to Authority for development of case studies

4.5 Referrals and Support for Other Authority Programs

As requested by Authority, Consultant shall provide information, analysis and advice in support of other Authority programs targeting EV charger deployment or related issues. Authority will work with Consultant to determine the scope for each instance of support prior to commencing work.

In the course of performing the services in this Agreement, Consultant will be engaging with a variety of Authority customers. Consultant shall remain aware of Authority's program portfolio and shall work with Authority to establish appropriate processes for Consultant to refer customers to these other programs when they may be a good fit.

Deliverables:

1. Materials to be determined in consultation with Authority
2. Ongoing referrals as necessary

4.6 Evaluation, Measurement and Verification Support

Consultant shall work with Authority and Authority's Evaluation, Measurement and Verification (EM&V) consultant to prepare any reports or documentation necessary for this program's EM&V plan. Consultant shall also incorporate into the Program Strategy any processes or elements identified by the Authority as critical to the success of the EM&V plan.

Deliverables:

1. Materials to be determined in consultation with Authority

5. Adjustments to/Additional Electric Vehicles Technical Assistance Services

Authority and Consultant may agree to adjust the tasks and services, or to add additional electric vehicle assistance services, as set forth in this Exhibit A. Such adjustments or additions shall be approved in writing (e-mail is acceptable) by the Authority Representative. Notwithstanding the above, any modifications or additions to the scope of services that require an increase in compensation shall require a written amendment to this Agreement.

Exhibit B
Schedule of Performance

This schedule may be modified with the written approval of Authority.

Task/Deliverable	Due Date
1.1 Kickoff	Within 1 month of Effective Date
1.2-1.3 Administrative Tasks	Ongoing as specified
1.4.1 Draft Final Report	4 months prior to end of contract or 1 month after customer support is ended due to lack of remaining funds
1.4.2 Final Report	2 months prior to end of contract with final invoice or 3 months after customer support is ended due to lack of remaining funds
2.1 Program Strategy	1 month after Effective Date
2.2.1-3 Messaging and Media Plan	Draft 1 month after Effective Date, Final 2 months after Effective Date, with updates at least 1 month before initiating significant media activity not already outlined
2.2.4 Website Content	3 months after Effective Date
2.2.5 Customer Collateral	Ongoing, as appropriate
2.3 Outreach, Education and Onboarding, Pre-Identified Sites	Initiate within 4 months of Effective Date
2.4 Education and Onboarding, Self-Identified Sites	Initiate within 4 months of Effective Date
2.5, 2.6, 2.8 Tasks	Ongoing
2.7 Installation Contractor & Bid Support	Ongoing, with delivery of contractor list
3.1 DCFC Facilitation Support	Ongoing
4.1. Identification of Additional Funding	Ongoing as specified
4.2.1 Data Integration, CRM Requirements	Within 3 months of Effective Date
4.2.2 Data Integration, software Integration	Ready for integration with Authority CRM within 1 month of completion of requirements 4.2.1
4.2.4 Data Integration, ongoing data transfer	Ongoing after completion of Integration (4.2.3) and Authority implementation
4.3 Customer Service Operations	Integration of operations within 3 months of contract signature, with operations ongoing

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 five hundred thousand dollars (\$500,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensations set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Task Budgets

Task	Amount
1. Administrative Tasks	\$50,000
2. Program Tasks for New and Existing Building Charging Technical Assistance	\$370,000
2.1. Develop Program Strategy	\$10,000
2.2. Prepare Program Outreach and Educational Campaign	\$60,000
2.3-4. Outreach, Education and Onboarding	\$70,000
2.5-6. Site Screening & Power Parking Assessments (60 sites)	\$180,000
2.7-8. Installation Contractor, Bid Support, & Post Recommendation Management	\$50,000
3. Program Tasks for Fast Charge Systems	\$0
4. Additional Support and Operational Integration	\$80,000
Total Not-to-Exceed	\$500,000

1. Payment Schedule

Consultant shall bill for Services on a time and materials basis at the rates shown below. Direct expenses will be billed at cost.

1. Rates

Role	Hourly Rate
Program Director	\$206
Operations Manager	\$120
Sr. Consultant	\$139

Sr. Electrical Engineer	\$160
Energy Engineer V	\$160
Energy Engineer II	\$115
Account Manager	\$95
Sr. Energy Auditor	\$78
Marketing Manager	\$112
Creative Director	\$165
Graphic Designer	\$80
Copy Editor	\$84
Web Developer	\$130
IT Developer	\$152

Additional roles and rates may be added to the table with prior written approval of Authority.

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.

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

1. **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 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:

- 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.
- 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.
- 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.
- 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 ensure such employees or representatives are bound by confidentiality obligations at least as protective as 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.

- 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.
- Consultant shall immediately notify Authority if it reasonably believes that there has been unauthorized access to the Confidential Information by a non-authorized person that could reasonably result in the use, disclosure, or theft of the Confidential Information.
- 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.
- 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.

- 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.
- 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. Notwithstanding the foregoing, Consultant will not be obligated to destroy or return Confidential Information that is contained in an archived computer system backup in accordance with Consultant's backup policies; provided, however, that any such Confidential Information retained shall continue to be subject to the nondisclosure obligations of this Agreement.
- 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.
- In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against 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.
- 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, Consultant will not be obligated to return or destroy Confidential Information that is contained within an archived computer backup system in accordance with Consultant's backup policies; provided, however, that any such Confidential Information retained shall continue to be subject to the nondisclosure obligations of this Agreement. Further, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.



Staff Report – Item 1f

Item 1f: Adopt a Resolution Authorizing the Chief Executive Officer to Execute Master Agreement with Citadel Energy Marketing LLC

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO and Director of Power Resources
Zak Liske, Senior Manager of Power Operations

Date: 6/14/2023

RECOMMENDATION

Adopt Resolution 2023-10 to delegate authority to the Chief Executive Officer (CEO) to execute a Master Agreement (as defined below) with Citadel Energy Marketing LLC ("Citadel").

BACKGROUND

SVCEA bases its power supply agreements on the industry-standard Edison Electric Institute (EEI) master power purchase and sale agreement ("Master Agreement"). The Master Agreement is a widely used standard form agreement containing general terms and conditions for electric power transactions. The SVCE Board of Directors ("Board") via resolution and/or minute action, has authorized the CEO to execute Master Agreements with multiple counterparties and has delegated authority to transact under the Master Agreements contingent on limits related to term, price and/or products such as renewable energy and resource adequacy capacity.

The Board-approved Energy Risk Management Policy "ERM Policy" establishes limits for the types of transactions the CEO, or his designee, may execute along with limits on authority related to term, volume and dollars and necessary oversight. The Board most recently approved a revised ERM Policy in November 2021. The Master Agreements are intended to work within the parameters of the ERM Policy.

In late 2022, Citadel reached out to SVCE staff to request that Citadel and SVCE become enabled under an EEI Master Agreement. The two parties have agreed to certain terms and provisions as defined in the attached EEI Cover and Collateral Annex, which have been reviewed and approved by SVCE's counsel and are consistent with the terms approved by the Board under existing Master Agreements.

ANALYSIS & DISCUSSION

The Master Agreements does not itself obligate SVCE to execute transactions but rather enables parties to transact various types of energy and related services such as renewable energy resources to meet Renewable Portfolio Standards (RPS); carbon-free resources; system energy at fixed and/or index prices and resource adequacy capacity products. The Master Agreement between SVCE and each counterparty includes standard, boilerplate terms and conditions, with modifications negotiated by the parties via a "Cover Sheet" as well as certain global credit provisions. Enhancement of credit and/or collateral requirements are memorialized through the execution of a Collateral Annex. Energy transactions are made through competitive solicitations and memorialized via written "Confirmations" setting forth the specifics of the purchase such as term, product, volume, and price.

The Board may either execute Master Agreements and subsequent Confirmations or delegate such authority to the CEO, which the Board has done subject to certain limitations and adherence to the Board-approved Energy Risk Management Policy.

Agenda Item: 1f**Agenda Date: 6/14/2023**

Citadel Master Agreement

Citadel LLC, is an American multinational hedge fund and financial services company. The proposed Master Agreement is with Citadel Energy Marketing LLC, the commodities trading arm of Citadel. Enabling transactions with Citadel Energy Marketing LLC will add a new counterparty when SVCE makes wholesale purchases, providing additional depth to SVCE's power procurement activities.

The CEO requests authority to execute the Master Agreement as provided for in Attachments 1 and 2, which contains the proposed terms under the Cover Sheet and Collateral Annex.

STRATEGIC PLAN

SVCE's Strategic Plan, Goal 2 Measure 1, directs staff to acquire long-term agreements to meet California's long-term renewable mandate.

ALTERNATIVE

SVCE could choose to not execute the Master Agreement with Citadel, which would not impact any existing contracts in the portfolio.

FISCAL IMPACT

There is no expected fiscal impact as a result of approving this Master Agreement with Citadel. Any future transactions with Citadel would be made within SVCE's approved budget at the time.

ATTACHMENTS

1. Resolution No. 2023-10 Delegating Authority to the Chief Executive Officer to Execute a Master Agreement with Citadel Energy Marketing LLC
2. Master Power Purchase and Sale Agreement with Citadel Energy Marketing LLC – Cover Sheet
3. Credit Elections Cover Sheet between Citadel Energy Marketing LLC and SVCE

SILICON VALLEY CLEAN ENERGY

RESOLUTION NO. 2023-10

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE A MASTER AGREEMENT WITH CITADEL ENERGY MARKETING LLC

THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the Silicon Valley Clean Energy Authority (“Silicon Valley Clean Energy”) was formed on March 31, 2016;

WHEREAS, Silicon Valley Clean Energy launched service under a community choice aggregation program on April 3, 2017;

WHEREAS, to provide such service, Silicon Valley Clean Energy purchases energy, renewable energy, carbon free energy, resource adequacy and related products and services (the “Product”) from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices;

WHEREAS, the EEI Master Agreement (“Master Agreement”) is an industry standard framework agreement used for the purchase of Product that establishes certain terms and conditions for the contractual relationship between an energy purchaser and energy supplier, but which does not require a purchaser to purchase or a supplier to supply the Product without further written agreements executed in accordance with the terms and conditions of a Master Agreement (“Confirmations”);

WHEREAS, Silicon Valley Clean Energy Board of Directors (“Board”) pursuant to Resolution No. 2016-09 delegated authority to the Chief Executive Officer to negotiate and execute separate Master Agreements with certain energy suppliers (“Suppliers”), (such agreements, the “Approved Master Agreements”);

WHEREAS, the Board continues to reserve to itself the authority to authorize new Approved Master Agreements; and

WHEREAS, Silicon Valley Clean Energy desires to enter into a Master Agreement with Citadel Energy Marketing LLC to transact Product and has agreed to terms and conditions consistent with Approved Master Agreements.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

1. Execute a Master Agreement with Citadel Energy Marketing LLC with terms consistent with the form of agreement presented to the Board of Directors, with any non-material changes, additions, variations or deletions (“Changes”) which following such execution by both parties, shall become an Approved Master Agreement.

ADOPTED AND APPROVED this 14th day of June 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	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Secretary

MASTER POWER PURCHASE AND SALE AGREEMENT**COVER SHEET**

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: May 22, 2023 (“Effective Date”). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (and any Confirmations confirming Transactions) shall be referred to as the “Agreement.” The Parties to this Master Agreement are the following:

Name: Citadel Energy Marketing LLC
 (“CEM” or “Party A”)

Name: Silicon Valley Clean Energy Authority
 (“SVCE” or “Party B”)

All Notices:

Address: c/o Citadel Americas LLC
 Southeast Financial Center
 200 S. Biscayne Blvd., Suite 3300
 Miami, FL 33131

Attn: Legal Department

Phone: [REDACTED]

E-mail: [REDACTED]

Duns: [REDACTED]

Federal Tax ID Number: [REDACTED]

All Notices:

Address: 333 W. El Camino Real, Suite 330
 Sunnyvale, CA 94087

Attn: Girish Balachandran, CEO and Monica
 Padilla, COO and Director of Power Resources

Phone: [REDACTED]

Email [REDACTED]

[REDACTED]

Duns: [REDACTED]

Federal Tax ID Number: [REDACTED]

Invoices:

Attn: Energy Invoices

Phone: [REDACTED]

E-mail: [REDACTED]

Invoices:

Attn: Power Supply Group

Phone: [REDACTED]

Email: [REDACTED]

Scheduling:

Attn: Scheduling Desk

Phone: [REDACTED]

E-mail: [REDACTED]

Scheduling:

Attn: ZGlobal

Phone: [REDACTED]

[REDACTED]

Email: [REDACTED]

[REDACTED]

Confirmations:

Attn: Energy Transaction Confirmations

Address:

Phone: [REDACTED]

E-mail: [REDACTED]

Confirmations:

Attn: _____

Phone: _____

Email: _____

Payments:

Attn: Energy Invoices

Phone: [REDACTED]

E-mail: [REDACTED]

Payments:

Attn: Finance Group

Phone: [REDACTED]

Email: [REDACTED]

Wire Transfer:

BNK: The Bank of New York Mellon
ABA: [REDACTED]
ACCT: [REDACTED]

Credit and Collections:

Attn: Energy Credit
Phone: [REDACTED]
E-mail: [REDACTED]

**With additional Notices of an Event of Default
or Potential Event of Default to:**

Attn: Legal Department
Phone: [REDACTED]
E-mail: [REDACTED]

Wire Transfer:

BNK: River City Bank
ABA: [REDACTED]
ACCT: [REDACTED]

Credit and Collections:

Attn: Finance Group
Phone: [REDACTED]
Email: [REDACTED]

**With additional Notices of an Event of Default
or Potential Event of Default to:**

Hall Energy Law PC
Attn: Stephen Hall
Phone: [REDACTED]
Email: [REDACTED]

and to:

Monica Padilla, COO and Director of Power
Resources
Email: [REDACTED]

and to:

Amrit Singh, CFO and Director of
Administrative Services
Email: [REDACTED]

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff FERC Electric Tariff No.1 Dated: July 29, 2021 Docket Number: ER21-1921-000

Party B Tariff N/A

Article Two

Transaction Terms and Conditions ☒ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☒ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☒ Cross Default for Party A:

☒ Party A: Cross Default Amount: XXXXXXXXXX

☐ Other Entity: Cross Default Amount \$ _____

☒ Cross Default for Party B:

☒ Party B: SVCE Cross Default Amount : XXXXXXXXXX

☐ Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff:

☒ Option A (Applicable if no other selection is made.)

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

☐ Option C (No Setoff)

Article Eight

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

☐ Option A

☐ Option B Specify: _____

☒ Option C Specify: _____

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B prepared in accordance with generally accepted accounting principles as soon as practicable after demand, provided that such financial statements shall be delivered within 180 days after the end of each annual period and such request or delivery will be deemed to have been filled if such financial statements are available at <https://www.svcleanenergy.org>, and (2) quarterly unaudited

financial statements for Party B for the first three quarters of its fiscal year as soon as practicable upon demand, provided that such financial statements shall be delivered within 90 days after the applicable quarter. Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly unaudited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction.

(b) Credit Assurances:

[REDACTED]
[REDACTED]

(c) Collateral Threshold:

[REDACTED]
[REDACTED]

If applicable, the provisions of Section 8.1(c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

[REDACTED]
[REDACTED]

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.
- ☐ Other, specify: Downgrade Event threshold as set forth in the Applicable Confirmation.

(e) Guarantor for Party B: N/A

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
- ☐ Option B Specify: _____
- ☒ Option C Specify: _____

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and (2) unaudited monthly consolidated financial statement of Party A within 45 days after month-end, and, in each case, such request will be deemed to have been filled if such financial statements are available at an internet or intranet site available from which such financial statements can readily be viewed. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles or international financial reporting standards; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

[REDACTED]
[REDACTED]

(c) Collateral Threshold:

[REDACTED]
[REDACTED]

If applicable, the provisions of Section 8.2(c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

[REDACTED]
[REDACTED]

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.
- ☐ Other - Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A's Guarantor is not rated by either S&P or Moody's.

(e) Guarantor for Party A: (1) Each of the following entities: Citadel Wellington LLC, Citadel Kensington Global Strategies Fund Ltd., and Citadel Kensington Global Strategies Fund II Ltd., and (2) any other entity that, as of the date of determination, is a

guarantor pursuant to and in accordance with an existing guaranty of Party A's obligations under this Agreement that is in full force and effect as of such determination date.

Guarantee Amount: [REDACTED]

Article Ten

Confidentiality ☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
- ☒ Party B is a Governmental Entity or Public Power System
- ☐ Add Section 3.6. If not checked, inapplicable.
- ☐ Add Section 8.4. If not checked, inapplicable.

Other Changes **This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.**

ARTICLE ONE: GENERAL DEFINITIONS.

1. Section 1.1 is amended by adding the following sentence at the end of the definition of "Affiliate":

"Notwithstanding the foregoing, the Parties hereby agree and acknowledge that (i) with respect to Party A, "Affiliates" shall mean "none" for purposes of Section 10.2(vi), and (ii) with respect to Party B, the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."
2. Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.
3. A new Section 1.8A is added as follows:

"1.8A "Collateral Annex" means that certain Collateral Annex to this Agreement, dated as of the date hereof, between Party A and Party B."
4. Section 1.12 is superseded. See Paragraph 10 to the Collateral Annex.
5. Section 1.23 is amended by (i) adding the following phrase after the word "obligations" in the second line thereof: "at the Delivery Point (to the extent there is a Delivery Point for the applicable Product)" and (ii) inserting in the thirteenth line of this Subsection before the phrase "foregoing factors" the word "two".

6. Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.
7. A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of March 31, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”
8. Section 1.27 is superseded. See Paragraph 10 to the Collateral Annex.
9. Section 1.28 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.
10. Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent such a purchase (Buyer has no obligation to enter into actual replacement transactions)”.
11. Section 1.52 shall be amended by deleting the phrase “the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.)” and replacing it with the following “S&P Global Ratings, a division of S&P Global, Inc.”
12. Section 1.53 is amended by:
 - (i) deleting the phrase “at the Delivery Point” from the second line; and
 - (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent such a sale”.
13. Section 1.56 is amended by (i) deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”
14. Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to.”
15. A new Section 1.62 is added as follows:

“1.62 “Unpaid Amounts” means the amounts owed by one Party to the other Party under this Agreement that have not been paid as of the Early Termination Date whether or not such amounts are then due, including, without duplication, (i) invoiced amounts, (ii) uninvoiced amounts, including without limitation amounts payable in respect of physical deliveries or settlements that occurred prior to the Early Termination Date, (iii) damages payable under Article 4 of this Agreement, and (iv) taxes or other costs or expenses to the extent an obligation to pay shall have accrued under this Agreement or the Confirmation relating to a Transaction on or prior to the Early Termination Date; *provided*, that Unpaid Amounts shall not include any Settlement Amounts.”

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.

16. Section 2.1 is deleted in its entirety and replaced with the following:

“A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certificate of incumbency setting forth the names and signatures of employees of Party B with authority to act on behalf of Party B, will be provided upon request.”

17. Section 2.2 is amended by deleting the second comma prior to “the Party A Tariff” in the third line.

18. Section 2.3 is hereby deleted in its entirety and replaced with the following:

“2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties (“Confirmation”). Notwithstanding anything to the contrary in this Master Agreement, this Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties.”

19. Section 2.4 is amended by (i) deleting the words “either orally or” in the seventh line, (ii) adding “a” before the word “writing” and (iii) deleting “be deemed to be accepted pursuant to Section 2.3” and replacing it with “govern such Transaction”.

20. Section 2.5 is amended by (i) deleting the second to last sentence thereof in its entirety and (ii) deleting “(or deemed acceptance)” from line 11.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES.

21. Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE.

22. Section 4.1 is hereby amended by deleting the phrase “or by Buyer’s failure to perform” in the second and third line and replacing such phrase with “or otherwise by the terms of this Agreement”.

23. Section 4.2 is hereby amended by deleting the phrase “or by Seller’s failure to perform” in the second and third line and replacing such phrase with “or otherwise by the terms of this Agreement”.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.

24. Section 5.1(a) is amended to change “three (3) Business Days” to “five (5) Business Days”.

25. Section 5.1(b) is deleted in its entirety and replaced with the following: “(b) 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; provided, however, that it shall only be an Event of Default under this Section 5.1(b) if the adverse effect of such misrepresentation, if susceptible of cure, is not remedied within 30 days after the Party’s receiving notice thereof”.
26. Section 5.1(c) is amended to change “three (3) Business Days” to “thirty (30) days”.
27. Section 5.1(e) is hereby amended by adding prior to the semicolon the phrase “or the Collateral Annex, as applicable, and such failure is not remedied by the close of business on the Business Day following the effectiveness of written notice thereof”.
28. Section 5.1(f) is amended by adding the following immediately prior to the semicolon at the end thereof: “if such failure is not remedied within five (5) Business Days after the Party’s receiving notice or having knowledge thereof.”
29. Section 5.1(g) is amended by (i) deleting the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, (ii) deleting clause (ii) thereof in its entirety beginning with the word “or” immediately prior to romanette (ii) in the ninth line thereof and ending immediately prior to the semi-colon at the end of the Section, and (iii) adding the following prior to the semicolon at the end of the Section:
- “provided, however, that it shall not constitute an Event of Default under this Section 5.1(g) if (i) such event, condition or failure is a failure to pay caused by an error or omission of an administrative or operational nature, (ii) funds were available to such Party to enable it to make the relevant payment when due, and (iii) such event, condition or failure is remedied on or before the third (3rd) Business Day after receipt of written notice of its occurrence”
30. Section 5.1(h)(ii) is amended by replacing the reference to “three (3) Business Days” with “thirty (30) days”.
31. Section 5.1(h)(v) is amended by adding “made in connection with this Master Agreement” after “any guaranty”.
32. Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding the following new subsections:
- “(i) such Party’s financial statements delivered or provided pursuant to Sections 8.1 or 8.2, as applicable, of this Master Agreement contain any information or statements therein that are materially false or misleading if such false or misleading statements are not remedied within thirty (30) days after written notice;
- (j) (i) Party A’s authorization to make sales at market-based rates in CAISO is revoked or suspended by the Federal Energy Regulatory Commission; (ii) Party A is unable to reinstate such authorization or cause such authorization to be reinstated within one-hundred eighty (180) days of the effective date of such revocation or suspension; and (iii) Party A is prohibited from selling power to Party B under any outstanding Transaction hereunder pursuant to the terms of such Transaction; or
- (k) Party B shall cease to have authority to make payments under this Master Agreement or any Transaction subject to this Master Agreement, which shall be an Event of Default under this Section 5.1(k) solely with respect to Party B.”

33. Section 5.2 is amended and restated in its entirety as follows:

“5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance, in each case subject to the immediately following sentence. Notwithstanding the foregoing, upon the occurrence of any Event of Default with respect to Party A under Section 5.1(d) or Section 5.1(h)(iii), Party B shall not have any right (x) to designate an Early Termination Date or terminate or liquidate any Transactions, or (y) withhold any payments due to Party A, or that would otherwise be due to Party A but for the suspension of performance by Party B, under this Agreement, in each case unless such Event of Default is still continuing on the date that is 45 calendar days following the date such Event of Default first occurred with respect to Party A (such 45-day period following such event, the “Novation Period”) and the Transactions hereunder have not been novated to a third party as provided below. Party B agrees (A) to work together with Party A in good faith to permit Party A to novate its interests in the Transactions hereunder prior to the expiration of the Novation Period to a third party that is not affiliated with Party A, (B) to sign any novation agreement or other documentation reasonably requested by Party A during the Novation Period or required by any bankruptcy court to effectuate, or otherwise in connection with, the novation of the Transactions (it being acknowledged and agreed that a novation agreement providing for the novation of the Transactions on terms substantially similar as the terms set forth in this Agreement (with reasonable adjustments to the applicable credit support provisions of this Agreement, including the Collateral Annex) to a third party not affiliated with Party A shall be deemed to be reasonably requested by Party A) and (C) not to object to any approval sought by Party A from any bankruptcy court to novate the Transactions to a third party that is not affiliated with Party A. Notwithstanding anything to the contrary herein, Party B shall not be required to (X) consent to a novation to a third party that does not either (i) have a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s, or (ii) (x) provide a guaranty reasonably acceptable to Party B from a guarantor that has a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s or (y) provide Performance Assurance in an amount reasonably acceptable to Party B, or (Y) provide any consent, or enter into any novation or other agreement, that materially and adversely affects any of Party B’s rights, benefits, risks or obligations under the Transactions (it being agreed that, if the requirements set forth in clause (X) above are satisfied, any agreement providing for the novation of the Transaction on terms substantially similar to the terms set forth in this Agreement (with conforming amendments to the applicable credit support provisions to take into account the credit support being provided) shall not be deemed to adversely affect any of Party B’s rights, benefits, risks or obligations under the Transactions).

The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party in a commercially reasonable manner by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In

making such calculation, the Non-Defaulting Party shall reference information supplied by one or more third parties 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, and information obtained through a recognized exchange, clearinghouse, or reference entity, with such adjustments that the Non-Defaulting Party determines, acting in good faith and in a commercially reasonable manner, are applicable based on the specific terms of such Transaction or Transactions. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If quotations or relevant market data from third party sources are not readily available, the Non-Defaulting Party may reference to information of the types described above as are available from internal sources (including any of the Non-Defaulting Party's affiliates) if that information is of the same type used by the Non-Defaulting Party in the regular course of its business for the valuation of similar transactions. If the Non-Defaulting Party's calculation of a Settlement Amount for a Terminated Transaction results in an amount that would be due to the Defaulting Party (i.e., the Defaulting Party was in the money), then the Settlement Amount for such Terminated Transaction shall be deemed to be zero dollars (\$0.00); *provided, however*, that, for the avoidance of doubt, the foregoing modification of the Settlement Amount shall not apply to calculation of Exposure under and pursuant to the terms of the Collateral Annex."

34. Section 5.3 is amended (i) by adding the phrase "or the Collateral Annex, as applicable" after "Article Eight" in the fourth line, (ii) by adding the phrase ", including Unpaid Amounts owed or that would have been owed by the Non-Defaulting Party," after the phrase "plus any or all other amounts due to the Defaulting Party under this Agreement" in the fourth and fifth line and (iii) by adding the phrase ", including Unpaid Amounts owed or that would have been owed by the Defaulting Party," after the phrase "plus any or all other amounts due to the Non-Defaulting Party under this Agreement" in the sixth and seventh line.
35. Section 5.6 is amended as follows: In Option A, delete "(i)" in the third line and delete "and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party".
36. Section 5.7 is amended as follows:
- (i) In line 4, deleting the words "any or" and adding the words "or payments (including payment or performance obligations under the Collateral Annex, if applicable)" after "suspend performance";
 - (ii) In line 6, capitalizing the word "early" and deleting the words "with respect to any single Transaction"; and
 - (iii) adding the following at the end thereof:

"Notwithstanding the foregoing, in no event shall the obligations of the Non-Defaulting Party be subject to the condition precedent that no Potential Event of Default shall have occurred or be continuing relating to Paragraph 5.1(c) with respect to the Defaulting Party. In addition, if an Early Termination Date is declared pursuant to Section 5.2 following suspension of performance, the Settlement Amount for the suspended Transactions shall include the Gain or Loss resulting from the suspension of performance prior to the Early Termination Date. The Gain or Loss resulting from suspension of performance will be determined in a commercially reasonable manner by the Non-Defaulting Party as of the originally scheduled date for delivery had such suspension not occurred."

ARTICLE SEVEN: LIMITATIONS.

37. Section 7.1 shall be amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.

38. A new Section 8.4 is added as follows:

“UCC Waiver. Section 8 and the Collateral Annex set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and as specified in the Collateral Annex, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party or Member that is complying with the relevant provisions of Section 8 and the Collateral Annex of this Master Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code, or case law applying similar doctrines, are waived.”

ARTICLE TEN: MISCELLANEOUS.

39. Section 10.2 is amended as follows:

(i) Replace the phrase “(including any Confirmation accepted in accordance with Section 2.3)” with “(including any Confirmation confirming a Transaction)” in subsections (ii), (iii), (iv), (vi), (vii), (viii), (x) and (xi);

(ii) In subsection (vi), insert the words “or regulatory” after “legal” in the second line thereof;

(iii) delete subsection (x) in its entirety and replace it with “(x) it is an “eligible contract participant” within the meaning of Section 1a(18) of the Commodity Exchange Act;”; and

(iv) delete subsection (xi) in its entirety and replace it with “(xi) [Reserved]; and”.

40. Section 10.4 is amended by adding the following to the end of the first sentence:

“, except where an express remedy or measure of damages is otherwise provided in this Agreement for such violation or breach, in which case the foregoing obligations shall not apply.”

41. Section 10.5 is amended and restated as follows:

“Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party, (i) collaterally assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (and without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed or otherwise supported by such Party or its Guarantor, if any, in accordance with a guaranty agreement or other credit support, in form, substance and amount and from a Guarantor or other credit support provider, in each case that is satisfactory to the other Party in its sole discretion, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any; provided, however, that in the case of any assignment pursuant to subsections (ii) or (iii) above, regardless of whether the assigning party is Party A or Party B, any such assignee (1) can make all of the representations and warranties of the assignor set forth herein after giving effect to such transfer, (2) complies with the non-assigning party’s know-your-customer and anti-money laundering internal rules, policies and procedures as reasonably and consistently applied, and (3) such transferee has satisfied all of the credit support requirements of such Party under this Agreement, provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.”

42. Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND 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.

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

43. In Section 10.6 change “NEW YORK” to “CALIFORNIA”.

44. Section 10.7 shall be deleted in its entirety and replaced with the following:

“All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or email. Notice given by email or hand delivery shall be effective upon actual receipt if received during the recipient’s normal business hours, or at the beginning of the recipient’s next business day after receipt if not received during the recipient’s normal business hours. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith; provided, however, that changes to wire transfer and other banking information on the Cover Sheet 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 Cover Sheet.”

“Notwithstanding anything to the contrary herein, notices to Party A under Section 5 shall be in writing and delivered to Party A via e-mail to the applicable address listed below:

Email: CitadelAgreementNotice@citadel.com”

45. Section 10.8 shall be amended by:

(i) replacing the phrase “(including any Confirmation accepted in accordance with Section 2.3)” with the phrase “(including any Confirmation entered into hereunder)”;

(ii) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11, (iv) Section 10.19, (v) Waiver of Jury Trial and general reference provisions, if applicable, (vi) the obligation of either Party to make payments hereunder, (vii) Section 10.6, and (viii) Section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(iii) adding the following to the end thereof: “This Master Agreement and any Confirmation hereunder 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 Master Agreement and any Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page. The Parties may rely on electronic or scanned signatures as originals under this Master Agreement and any Confirmation.”

46. Section 10.9 is amended as follows:

(i) deleting the first sentence in its entirety and replacing it with the following: “Each Party agrees to provide copies of its records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement if reasonably requested by the other Party.”;

(ii) in the second sentence insert the words “copies of” before the word “statements”;

(iii) in the third sentence, the words “If any such examination reveals any inaccuracy in any statement,” are replaced by: “If the Parties determine that any statement, charge or computation contained any inaccuracy,”; and

(iv) add the following text at the end: “The Parties agree that such examination and audit refer only to the examination and audit of copies of the relevant books, records and telephone recordings provided by a Party and do not grant either Party the right to an on-premises examination and audit.”

47. Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 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.”

48. Section 10.11 is hereby deleted in its entirety and replaced with the following:

“Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet to this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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. The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

Party A and Party B acknowledge and agree that the Master Agreement and any Transactions entered into in connection therewith are 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.” However, the Parties failure to designate information as confidential does not waive or limit the Parties’ rights to object to the production of material or assert exemptions to the requested documents. 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 hereto to Party B pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Party B will as soon as practical notify Party A in writing via email that such request has been made. In no event, will Party B provide Party A less than 30 days’ notice before it produces Confidential Information to any third person or entity. Party A 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 Party B. If Party A takes no such action after receiving the foregoing notice from Party B, Party B 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 Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A, if requested by Party A, and Party A agrees to indemnify and hold harmless Party B, its officers, employees and agents (“Party B Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Party B Indemnified Parties for Party B’s refusal to disclose any Requested Confidential Information.”

49. The following Mobile-Sierra clause shall be added as Section 10.12:

“Standard of Review/Modifications.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and further refined in *NRG Power Marketing v. Maine Public Utilities Commission*, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

50. The following shall be added as a new Section 10.13:

“Party A’s Deliveries. Upon request of Party B, Party A shall provide to Party B (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution,

delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

51. The following shall be added as a new Section 10.14:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

52. The following shall be added as a new Section 10.15:

“Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Confirmation or the Imaged Agreement (or photocopies of the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

53. The following shall be added as a new Section 10.16:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

- (a) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the fallback Price Source specified in the Confirmation for the relevant Transaction, if any; provided, however, if no fallback Price Source is specified or if the Floating Price cannot be determined by reference to the fallback Price Source, then the Parties shall negotiate in good faith to agree on the Floating Price (or a method for determining the Floating Price), and if the Parties have not so agreed on or before the second Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be deemed to be the arithmetic mean of the Floating Prices determined by at least three leading, independent dealers in the principal trading market for the relevant commodity, none of which are affiliates of either Party, taking into consideration the latest available quotation for the relevant commodity and any other information that the Parties and the dealers in good faith deem relevant. Such dealers will be jointly appointed by the Parties. If, by the fifth Business Day following the first Trading Day on which that Market Disruption Event occurred or existed, the Parties have not agreed upon the dealers or a determination of the Floating Price cannot be obtained from at least three dealers, the relevant Transaction(s) will be terminated as of such fifth Business Day in accordance with the methodology specified in Section 5.3, except that each Party will determine a Settlement Amount for the Transaction(s), and the Settlement Amount will be an amount equal to (x) one-half the difference between the Settlement Amount of the Party with the higher Settlement Amount and the Settlement Amount of the Party with the lower Settlement Amount, plus (y) the Settlement Amount of the Party with the lower Settlement Amount.

“Determination Period” means each calendar month a part or all of which is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining the Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining the Floating Price; (e) a material change in the formula for or the method of determining the Floating Price; (f) a material change in the content, composition or constitution of the commodity or the contract on which the Floating Price is based; (g) the number of applicable contracts traded on the relevant Exchange on the relevant Trading Day is fewer than the minimum number of contracts specified in the applicable Confirmation; or (h) a material limitation is imposed on trading in the relevant contracts or commodity as specified in the applicable Confirmation.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“RTO” means any regional transmission operator or independent system operator.

“RTO Transaction” means a Transaction in which the Price Source is an RTO.

“Trading Day” means a day in respect of which the relevant Price Source published or should have published the Floating Price.

- (b) Revisions to Published Prices. For purposes of determining the Floating Price for any day, if the price published or announced on a given day or used or to be used to determine the Floating Price is subsequently revised and the revision is published or announced by the person responsible for that publication or announcement within the later of (1) one-hundred and eighty (180) days of the original publication, announcement or availability or (2) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of (i) that revision and (ii) the amount (if any) that is payable as a result of that revision. If, not later than thirty (30) days after publication or announcement of that revision, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that revision.

54. The following shall be added as a new Section 10.17:

“Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

55. The following shall be added as a new Section 10.18:

“No Recourse Against Constituent Members of Party B. Party B 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. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.”

56. The following shall be added as a new Section 10.19:

“Each Party acknowledges and agrees that (i) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, (ii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Code, (iii) each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, (iv) electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, (v) the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code, and (vi) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties.”

57. The following shall be added as a new Section 10.20:

“Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.”

58. The following shall be added as a new Section 10.21:

“Commodity Trade Option Representation. As of the date of any Option Transaction:

a. The party that is the offeror represents and warrants to the other party that such offeror party: (a) is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act, as amended; or (b) (i) is a producer, processor, commercial user of, or a merchant handling, the commodity that is the subject of the transaction, or the products or byproducts thereof; and (ii) is offering or entering into the transaction solely for purposes related to its business as such.

b. The party that is the offeree represents and warrants to the other party that such offeree is: (a) a producer, processor, commercial user of, or a merchant handling, the Commodity that is the subject of the transaction, or the products or byproducts thereof; and (b) entering into the transaction solely for purposes related to its business as such;

c. Each party represents and warrants to the other party that such Option Transaction, if exercised, is intended to be physically settled and would result in the sale of the specified nonfinancial commodity for immediate or deferred shipment or delivery.

For purposes hereof:

“Commodity” means, in respect of a Transaction, the commodity specified in the relevant Confirmation or in the relevant commodity reference price specified in the relevant Confirmation.

“Commodity Option Buyer” means, in respect of an Option, the party specified as such in the related Confirmation.

“Commodity Option Seller” means, in respect of an Option, the party specified as such in the related Confirmation.

“Option” means any Transaction that is identified in the related Confirmation as an Option and provides for the grant by Commodity Option Seller to Commodity Option Buyer of the right, but not the obligation, to cause Commodity Option Seller to deliver to the Commodity Option Buyer the non-financial commodity that is the subject of the Option on the Settlement Date.

“Option Transaction” means any Transaction involving an Option.”

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM.

Schedule M is hereby deleted in its entirety and replaced with the following:

59. The Parties agree to add the following definitions to Article One:

“**Act**” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).

“**Governmental Entity or Public Power System**” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

60. The following sentence shall be added to the end of the definition of “**Force Majeure**” in Article One:

“If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.”

61. The Parties agree to add the following sections to Article Three:

“Section 3.4 Party B’s Deliveries. Upon request by Party A, Party B shall provide Party A (a) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement, and (b) certificate providing the incumbency and signatures of the signatories of Party B

executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to this Master Agreement or any credit support provided with respect to this Master Agreement or the Collateral Annex from (a) suit, (b) jurisdiction of court (provided such court is located with a venue permitted under the Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).”

62. The Parties agree to add the following representations and warranties to Section 10.2:

“Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System’s obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System obligations hereunder and under each Transaction or (c) to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.”

63. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

“NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.”

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.

64. The Parties agree to add the following definitions to Schedule P:

“**CAISO Energy**” means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the California Independent System Operator (“CAISO”) Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO Tariff, as amended from time to time for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” as defined in the CAISO Tariff.

“**West Firm**” or “**WSPPC-Firm**” means with respect to a Transaction, a Product defined by the WSPP Agreement as amended, in Service Schedule C as Firm Capacity/Energy Sale or Exchange Service.

“**WSPP Agreement**” means the WSPP as amended from time to time.

65. The Parties agree to add the following new Section 7 to Schedule P:

“**Other Products and Service Levels:** The Parties may agree to use a product/service level defined by a different agreement (e.g., the WSPP Agreement, the California Independent System Operator Tariff, etc.) for a particular Transaction. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such Transaction, the Transaction shall be subject to all the terms of this Agreement, except that (1) all service level/product definitions; (2) the regional reliability requirements and guidelines; and (3) Force Majeure/Uncontrollable Force definitions shall have the meaning ascribed to them in the different agreement in effect on the date the Transaction was entered into. Provided, however, with respect to Transactions subject to the WSPP Agreement, the methodology for calculating the payments for failure to deliver or receive, under Sections 4.1 and 4.2 hereto, shall be in accordance with Section 21.3 of the WSPP Agreement; provided further, that the “Accelerated Payment of Damages” addressed in Sections 4.1 and 4.2 hereto shall continue to apply to such payments if such election is made on the Cover Sheet.”


The Parties may from time to time by notice to each other mutually agree to adopt product definitions, delivery point language and definitions, and conversion conventions, that are posted by the Edison Electric Institute to its website as optional language for the Master Power Purchase and Sale Agreement.

[Signatures appear on the following page.]

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

**CITADEL ENERGY MARKETING LLC, a
Delaware limited liability company**

By: Citadel Advisors LLC, its Manager

By:  _____
5F5F0D31C8E5424...

Name: Shellane Mulcahy

Title: Authorized Signatory

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

By: _____

Name: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Between
Citadel Energy Marketing LLC (“Party A”)
and
Silicon Valley Clean Energy Authority (“Party B”)

Paragraph 10. Elections and Variables

I. Collateral Threshold.

A. Party A Collateral Threshold.

- ☒ The “Threshold Amount” means the lesser of (a) the amount of any guaranty of Party A’s obligations under this Agreement provided to Party B by Party A’s Guarantors and (b) the amount set forth under the heading “Party A Collateral Threshold” opposite the lowest Credit Rating assigned by S&P to any Party A Guarantor; provided, that if the amounts in sub-clause (a) and (b) above are the same, Party A’s Threshold shall be such amount; provided, however, notwithstanding the foregoing, Party A’s Threshold Amount shall be zero (\$0.00) if either (x) on the relevant date of determination, any Party A Guarantor does not have a Credit Rating from S&P or (y) an Event of Default with respect to Party A has occurred and is continuing.

<u>Party A Collateral Threshold</u>	<u>S&P Credit Rating</u>

- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to

Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A	
<u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- ☐ “Threshold Amount” means (a) The lesser of (i) the amount of the Guaranty Agreement provided to Party B by Party A’s Guarantor and (ii) the amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for Party A’s Guarantor on the relevant date of determination, and if Party A’s Guarantor Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination Party A’s Guarantor does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A	
<u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- ☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party A’s Collateral Threshold be greater than \$_____.
- ☐ Other:

B. Party B Collateral Threshold.

- ☐ \$[] (the “Threshold Amount”); provided, however, that, notwithstanding the foregoing, the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default with respect to Party B or upon the existence of any Downgrade Event with respect to Party B as defined and specified in any Confirmation under this Agreement.
- ☐ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party B Collateral Threshold” opposite the Credit Rating for [Party B][Party B’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

<u>Party B</u>	
<u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- ☒ The lesser of: (a) the amount (the “Threshold Amount”) set forth below under the heading “Party B Collateral Threshold” opposite the Credit Rating from the rating agency specified below for Party B on the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party B has occurred and is continuing.

<u>Party B</u>	
<u>Collateral Threshold</u>	<u>S&P Credit Rating</u>
██████████	██████████
██████████	██
██████████	█
██████████	██
██████████	██████
██████████	██████
██████████	██████
██████████	██████████

- ☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than \$_____.
- ☐ Other – see attached threshold terms

II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

		<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A)	Cash	[X]	[X]	100%
(B)	Letters of Credit	[X]	[X]	100% unless a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit in which case the Valuation Percentage shall be zero (0).
(C)	Other	[]	[]	_____ %

III. Independent Amount.

A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$0 (zero). If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☐ Party A shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party A shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any

time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☒ Not Applicable

B. Party B Independent Amount.

☐ Party B shall have a Fixed Independent Amount of \$0 (zero). If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

☐ Party B shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

☐ Party B shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☒ Not Applicable

IV. Minimum Transfer Amount.**A. Party A Minimum Transfer Amount: \$ 100,000****B. Party B Minimum Transfer Amount: \$ 100,000**

provided that, in each case, (i) if the Party is a Defaulting Party at the time, its Minimum Transfer Amount will be zero, (ii) if a Secured Party is holding an amount of Performance Assurance at the time, the Secured Party's Collateral Requirement is, or is deemed to be, zero at the time, and, but for its Minimum Transfer Amount, the Secured Party would be required to make a Transfer under Paragraph 4, the Minimum Transfer Amount for the Secured Party will be zero, and (iii) if no Transactions are outstanding, then the Minimum Transfer Amount for both Parties will be zero.

V. Rounding Amount.**A. Party A Rounding Amount: \$ 10,000****B. Party B Rounding Amount: \$ 10,000****VI. Administration of Cash Collateral.****A. Party A Eligibility to Hold Cash.**

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- ☒ Party A or Party A's Custodian shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not subject to an Event of Default; (2) Party A's Custodian, if any, is a Qualified Institution; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- ☒ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other - zero percent (0.00%)

B. Party B Eligibility to Hold Cash.

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- ☒ Party B or Party B's Custodian shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not subject to an Event of Default; (2) Party B's Custodian, if any, is a Qualified Institution; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- ☒ Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other - zero percent (0.00%)

VII. Notification Time.

- ☒ Other - 10:00 a.m. Pacific Prevailing Time on a Local Business Day

VIII. Demands and Notices.

All demands, specifications and notices to Party A under this Collateral Annex will be made to:

Citadel Energy Marketing LLC
c/o Citadel Americas LLC
Southeast Financial Center
200 S. Biscayne Blvd., Suite 3300
Miami, FL 33131

Attn.: Collateral Management
Telephone No.: [REDACTED]
Email: [REDACTED]

Posted Collateral for Transfer to Party A in the form of Letters of Credit as well as amendments thereto shall be delivered to the address above, attention: Treasury/Credit.

All demands, specifications and notices to Party B under this Collateral Annex will be as set forth on the Cover Sheet to the Master Agreement.

IX. General.**Amendment to Introductory Paragraph:**

- (i) The first paragraph of the introduction shall be amended to read as follows:

“This Collateral Annex, together with the Paragraph 10 Cover Sheet, (the “Collateral Annex”) supplements, forms a part of, and is subject to the EEI Master Power Purchase and Sale Agreement dated as of May 22, 2023 between Citadel Energy Marketing LLC (“Party A”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Party B”), including the Cover Sheet and any other annexes thereto (as amended and supplemented from time to time, the “Agreement”). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given to such terms in the Agreement.”

Amendments to Definitions:

- (i) The definition of “Credit Rating” is amended and restated in its entirety as follows:

““Credit Rating” shall mean, with respect to an entity on any date of determination, the respective rating then assigned to its unsecured and senior, long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s.”

- (ii) “Credit Rating Event” shall be amended by replacing “6(a)(iii)” with “6(a)(ii)”.

- (iii) “Downgraded Party” shall be amended by replacing “6(a)(i)” with “6(a)(ii)”.

- (iv) The definition of “Letter of Credit” shall be deleted from both the Master Agreement, as amended by the Cover Sheet thereto, and the Collateral Annex and replaced with the following:

“Letter(s) of Credit” shall mean an irrevocable, standby Letter of Credit, issued by an issuer or confirming entity, as applicable, that is a Qualified Institution, substantially in the form attached hereto as Schedule 1 to this Paragraph 10 to the Collateral Annex or in such other form as may be reasonably acceptable to the beneficiary thereof, in each case, with such changes to the terms in that form as the issuing bank may require and as may be reasonably acceptable to the beneficiary thereof.”

- (v) “Letter of Credit Default” shall be amended as follows:

- a. Clause (a) shall be deleted and replaced with the following phrase: “(a) the issuer of such Letter of Credit shall fail to be a Qualified Institution”; and
- b. A new clause (f) shall be added after the existing clause (e) and immediately before the phrase “provided, however” as follows:

“(f) the Pledgor fails to extend or replace such Letter of Credit at least twenty (20) Local Business Days prior to its expiration.”

c. The following is added after the last sentence:

“Notwithstanding the foregoing, references to the “issuer” in this definition shall mean, for each Letter of Credit that was confirmed by a Qualified Institution, the confirming entity.”

- (vi) “Local Business Day” shall be amended by replacing the word “day” with “Business Day”.
- (vii) “Notification Time” shall be amended by replacing “11:00, New York time” with “10:00 a.m. Pacific Prevailing Time on a Local Business Day.”
- (viii) “Performance Assurance” shall be amended by replacing “6(a)(iv)” with “6(a)(iii)”.
- (ix) “Qualified Institution” shall be amended to read as follows:

““Qualified Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with a Credit Rating of at least (a) “A-” by S&P or “A3” by Moody’s, and (b) having assets of at least TEN BILLION AND 00/100 DOLLARS (\$10,000,000,000.00).”
- (x) “Reference Market-maker” is amended by adding “which is not an Affiliate of either Party” after the words “leading dealer” in the first line thereof.
- (xi) “Secured Party” shall be amended by replacing “3(b)” with “3(a)”.

Amendments to Paragraph 4:

- (i) The second to last sentence of Paragraph 4, “Delivery of Performance Assurance”, shall be amended to read as follows:

“Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by not later than the close of business on the fourth Local Business Day; and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by not later than the close of business on the fifth Local Business Day.”

- (ii) The following is added after the last sentence of Paragraph 4:

“Notwithstanding any other provision in this Master Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of Party A (or its Custodian) or Party B (or its Custodian), any right, remedy, power or privilege permitted with respect to transfer timing (or any other deadline) pursuant to Paragraph 4, as modified herein, regardless of the frequency or constancy of such failure or delay, shall operate in any way as a waiver thereof by such Party.”

Amendments to Paragraph 5:

- (i) Paragraph 5(a) shall be amended by inserting “so long as the amount of the requested reduction is equal to or greater than the Minimum Transfer Amount” after “the Pledging Party for the benefit of the Secured Party” in the third line thereof.

- (ii) Paragraph 5(a) shall be further amended by deleting “before the Notification Time on a Business Day” and replacing it with “before the Notification Time on a Local Business Day”.

Amendments to Paragraph 6:

- (i) Paragraph 6(a)(ii)(A) shall be amended by inserting “(other than subparagraph (B) below)” after “the provisions of this Paragraph 6(a)(ii)” in the first line thereof.
- (ii) Paragraph 6(a)(ii)(B) shall be amended by deleting “to perfect the security interest of the Non-Downgraded Party” and replacing it with “to perfect the security interest of the Downgraded Party”.
- (iii) Paragraphs 6(b)(iii) and 6(b)(iv) are deleted and replaced in their entirety as follows:

“(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first (1st) Local Business Day after the occurrence thereof (or the second (2nd) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).
- (iv) Notwithstanding anything herein to the contrary, (A) upon or at any time after the occurrence and during the continuation of an Event of Default with respect to the Pledging Party or (B) if an Early Termination Date has occurred or been designated and there exist any unsatisfied payment Obligations, then the Secured Party may draw on any outstanding Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Pledging Party but have not been paid to the Secured Party within the time allowed for such payments under this Agreement (including any related notice or grace period or both). If a Letter of Credit Default exists with respect to any Letter of Credit provided by or on behalf of the Pledging Party, then the Secured Party may draw on the Letter of Credit subject to such Letter of Credit Default in an amount equal to the entire, undrawn portion of such Letter of Credit. Draws on outstanding Letters of Credit shall be made upon submission to the bank issuing such Letter(s) of Credit of one or more certificates specifying the amounts due and owing to the Secured Party in accordance with the specific requirements of the Letter of Credit. Cash proceeds received from drawing upon any Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party’s obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party’s receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.”

Amendments to Paragraph 7:

- (i) Paragraph 7(a) is amended as follows:
 - a. deleting the phrase “(i) an Event of Default with respect to the Pledging Party has occurred and is continuing or” in lines one and two thereof and by deleting the phrase “(i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or” in lines six and seven thereof;
 - b. in line 7, by replacing the words “is deemed to occur” with “has been designated”; and
 - c. by adding the words “in the form of Cash” after the phrase “the right to set off any Performance Assurance” in clause (ii) thereof.
- (ii) Paragraph 7(b) shall be amended by deleting it in its entirety and inserting the words “Intentionally Omitted.”
- (iii) Paragraph 7(d) is amended and restated in its entirety as follows (with deleted text crossed-out (e.g., ~~crossed-out~~) and added text double underlined (e.g., double underlined) for illustrative purposes only):
 - (d) In addition to the provisions of Paragraph 7(a), if at any time ~~(i) an Event of Default with respect to the Secured Party has occurred and is continuing or~~ (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party (other than an Early Termination Date relating to less than all Transactions where the Secured Party has paid in full all of its obligations that are then due under the Agreement), then:
 - (1) the Secured Party will be obligated immediately to Transfer all Performance Assurance ~~(including other than~~ any Letter of Credit) and the Interest Amount, if any, to the Pledging Party; and
 - (2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance (other than any Letter of Credit), including any such rights and remedies under law then in effect; and (y) to the extent that the Performance Assurance (other than any Letter of Credit) or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance (other than any Letter of Credit) held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) ~~exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and~~
 - (3) ~~the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.~~

- (iv) A new Paragraph 7(e) and a new Paragraph 7(f) are added as follows:

“(e) The Secured Party will transfer to the Pledging Party any proceeds and Performance Assurance remaining after liquidation, set-off and/or application under Paragraphs 7(a) and 7(d) after satisfaction in full of all amounts payable by the Pledging Party with respect to any Obligations; the Pledging Party will in all events remain liable for any amounts unpaid after liquidation, set-off and/or application under Paragraphs 7(a) and 7(d).

(f) When no amounts are or thereafter may become payable by the Pledging Party with respect to any Obligations, the Secured Party will Transfer to the Pledging Party all Performance Assurance and the Interest Amount, if any.”

Amendments to Paragraph 8:

- (i) Paragraphs 8(a) and 8(b) are both amended by adding after the third sentence of each paragraph the following sentence: “If the Parties are unable to obtain any quotations for the Secured Party’s Net Exposure, the Parties will appoint a mutually acceptable leading market participant in the relevant market to make such calculation and such expense will be shared equally by the Parties.”

- (ii) Paragraph 8 is amended by inserting the following new subparagraph 8(c) at the end thereof:

“(c) Each quotation from a Reference Market-maker will be for an amount, if any, that would be paid to the Party requesting the quotation (expressed as a negative number) or by the Party requesting the quotation (expressed as a positive number) in consideration of an agreement between such Party (taking into account this Collateral Annex and the existence of any Guarantor with respect to the obligations of such Party) and the quoting Reference Market-maker to enter into a transaction that would have the effect of preserving for the Party requesting the quotation the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the Parties in respect of such Transaction or group of Transactions. The costs of retaining Reference Market-makers for the purposes of this Paragraph 8 shall be borne equally by the Secured Party and the Pledging Party. The determination made by such Reference Market-makers shall be binding and conclusive on the Parties absent manifest error.”

Amendments to Paragraph 10:

- (i) Paragraph 10 shall be amended by inserting the following new subparagraph 10(VI)(C) at the end thereof:

“In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Performance Assurance in the form of Cash (all of which may be retained by the Pledging Party and shall not be considered Performance Assurance):

(x) if the Interest Amount for an Interest Period is a positive number, upon request of the Pledging Party, the Secured Party will transfer to the Pledging Party such Interest Amount by the fifth Business Day after the end of such Interest Period, to the extent that a Collateral

Requirement as calculated by the Pledging Party would not be created or increased by that Transfer; any Interest Amount or portion thereof not transferred pursuant to this subsection (x) of this Paragraph will constitute Performance Assurance in the form of Cash and will be subject to the security interest granted under Paragraph 2 to the Collateral Annex.”

- (ii) Schedule 1 to the Collateral Annex is deleted in its entirety and replaced with the form of Letter of Credit attached as Schedule 1 to this Paragraph 10 to the Collateral Annex.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the “Administration of Cash Collateral” section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex.

IN WITNESS WHEREOF, the Parties have caused this Paragraph 10 to the Collateral Annex to be duly executed as of the Effective Date of the EEI Master Power Purchase and Sale Agreement between the Parties.

CITADEL ENERGY MARKETING LLC

By: Citadel Advisors LLC, its Manager

By:  _____
Name: Shellane Mulcahy
Title: Authorized Signatory

**SILICON VALLEY CLEAN ENERGY
AUTHORITY**

By: _____
Name: _____
Title: _____

SCHEDULE 1**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____

Bank Ref.: _____

Amount: US\$[XXXXXXXXXX]

Expiration Date: _____

Beneficiary:

[_____]

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 [insert Beneficiary name] (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain EEI Master Power Purchase and Sale Agreement, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex dated as of May 22, 2023 and as amended or otherwise modified from time to time between Applicant and Beneficiary (the “Master Agreement”). This Letter of Credit shall become effective immediately and shall expire on [insert date], 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 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, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) U.S. mail, (b) overnight courier or (c) as a PDF attachment to an e-mail to [bank email address]. Transmittal by email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any), or any copy thereof, 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, that such drafts 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.

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 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.]¹

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: [*insert Beneficiary Notice Information*]. 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.]²

[*Bank Name*]

[*Insert officer name*]

[*Insert officer title*]

¹ Bracketed language to be added if required by Issuer.

² Bracketed language to be added if required by Issuer.

EXHIBIT A**DRAWING CERTIFICATE**

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of *[insert Beneficiary name]*, 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 EEI Master Power Purchase and Sale Agreement, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex dated as of May 22, 2023 and as amended or otherwise modified from time to time (the "Master Agreement").
2. An Event of Default (as defined in the Master Agreement) has occurred and is continuing with respect to Applicant under the Master Agreement or an Early Termination Date has occurred or been designated. Wherefore, the undersigned does hereby demand payment in an amount equal to all amounts due and owing of \$[_____].

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 twenty (20) Local Business Days prior to such Expiration Date or a Letter of Credit Default (as defined in the Master Agreement) exists.

3. The undersigned is a duly authorized representative of *[insert Beneficiary name]* 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 *[insert Beneficiary name]* by wire transfer in immediately available funds to the following account:

[specify account information]

[insert Beneficiary name]

[name and title of authorized representative]

Date _____

Staff Report – Item 1g

Item 1g: Adopt a Resolution Authorizing the Chief Executive Officer to Execute a Sole Source Contract with the San Jose Conservation Corps to Build the SVCE All-Electric Demonstration Home

From: Girish Balachandran, CEO

Prepared by: Adam Selvin, Director of Energy Services and Community Relations
Pamela Leonard, Senior Manager of Communications

Date: 6/14/2023

RECOMMENDATION

Staff recommends that the Board adopt Resolution 2023-11 to delegate authority to the Chief Executive Officer to execute a sole source contract with the San Jose Conservation Corps to build the Silicon Valley Clean Energy all-electric demonstration home in an amount not to exceed \$350,000.

BACKGROUND

In June 2022, the Silicon Valley Clean Energy (SVCE) Board of Directors approved \$1.9M in funding from the 2021 PG&E carbon-free allocation savings for new community electrification engagement and demonstration programs. The funding allocations approved three new programs that make going all-electric more tangible to community members. The first program was the Electrification Grants for Community Demonstration Projects, the second was Community Electrification Engagement Grants, and the third was the FutureFit Demonstration Home.

The approved budget for the FutureFit Demonstration Home project was \$350,000. The demonstration home will serve as a complement to the physical demonstration projects located at community facilities. The demonstration unit will be mobile and placed at community events throughout the SVCE service area, such as art and wine festivals, farmers' markets, and other large events. The demonstration home will feature all-electric appliances (heat pump heating and cooling, heat pump water heater, induction cooking, smart thermostat, solar+battery, electric fireplace, etc.). Designed as an attractive and visually exciting exhibit, the demonstration home will bring electrification education to customers where they are and stand out at events where customers may not otherwise be thinking about energy. SVCE also purchased a Ford F-150 Lightning that could transport and power the unit, showcasing the benefits of EVs, bidirectional charging, solar and storage.

ANALYSIS & DISCUSSION

Over the last year, SVCE staff has carefully researched everything from permitting and size limitations to builders and workforce programs that could help make this project a reality. Engaging local workforce programs in building the unit, installing the electric appliances, and contracting for storage and transport was proposed as an opportunity for this project. Staff identified the San Jose Conservation Corps (SJCC) as the organization that can help us build the demonstration home.

Agenda Item: 1g**Agenda Date: 6/14/2023**

Staff is working to get a final project cost from SJCC, as the estimates depend on finalizing architectural designs for the unit. The City of San Jose has a similar demonstration unit that was also built by SJCC, and the cost of that unit was below \$100,000. While staff expects similar pricing, we want to prepare for the possibility of cost overruns, particularly as it relates to materials sourcing, which is why we are seeking authorization for the CEO to execute the contract once the final bid is received. This expedited decision-making process will ensure that the project stays on track and progresses throughout the summer while the SVCE board is on recess.

The San Jose Conservation Corps and Sole Sourcing

SJCC is a local non-profit dedicated to environmental conservation, youth development, and community empowerment. The SJCC has a long-standing reputation for excellence in construction and providing job training opportunities for at-risk youth.

Experience and Expertise

The SJCC provides experience in creating the type of demonstration home SVCE would like to build. They have expertise in electrical work and installing appliances that promote all-electric living. SJCC also helped build the City of San Jose's Climate Smart demonstration home. Partnering with SJCC would also be an opportunity to educate the future contractor workforce about electrification as their trainees go on to have jobs in the trades. The SJCC is the only program of this kind to be based in and serve Santa Clara County.

The SJCC's focus on conservation and sustainability aligns with the SVCE mission and objectives. Building the all-electric demonstration home with them further exemplifies our organization's commitment to environmental sustainability and community partnerships. By showcasing the benefits of the all-electric home, we can inspire others to adopt similar practices.

Cost and efficiency

Establishing a sole source contract with SJCC can save costs and increase efficiency. Working with a single contractor will streamline the procurement process and reduce potential delays. SJCC's familiarity and experience with what we are looking to build helps ensure effective collaboration to ensure the project can be delivered on time and within budget.

STRATEGIC PLAN

The proposed agreement aligns with the board-adopted strategic plan for the following goals:

- Goal #6: Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices
- Goal #7: Support communication and engagement with public, private and non-profit stakeholders to leverage our decarbonization efforts

ALTERNATIVE

If the authorization is not approved, we can wait until the August Board Meeting to provide the final contract with SJCC for approval.

FISCAL IMPACT

The final contract amount will be reported in the CEO report once it is executed. The total project cost is already funded by the board and set not-to-exceed \$350,000.

ATTACHMENT

1. Resolution 2023-11 Approving an Agreement with the San Jose Conservation Corps to Build an SVCE All-Electric Demonstration Home

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2023-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING AN AGREEMENT WITH THE SAN JOSE CONSERVATION CORPS TO BUILD AN SVCE ALL-ELECTRIC DEMONSTRATION HOME

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, in June of 2022, the SVCE Board of Directors ("Board") approved \$1.9 million in funding from the 2021 PG&E carbon-free allocation savings for new community electrification engagement and demonstration programs;

WHEREAS, Staff recommends that the Board delegate authority to the Chief Executive Officer ("CEO") to execute a sole source contract with the San Jose Conservation Corps to build a Silicon Valley Clean Energy all-electric demonstration home;

WHEREAS, the San Jose Conservation Corps is a local non-profit dedicated to environmental conservation, youth development, and community empowerment, which has constructed similar all-electric homes and is uniquely qualified to construct such an all-electric demonstration home;

WHEREAS, the all-electric demonstration home will serve as a complement to the physical demonstration projects located at community facilities. It will be mobile and placed at community events throughout the SVCE service area, such as art and wine festivals, farmers' markets, and other large events. The demonstration home will feature all-electric appliances (heat pump heating and cooling, heat pump water heater, induction cooking, smart thermostat, solar+battery, electric fireplace, etc.). Designed as an attractive and visually exciting exhibit, the demonstration home will bring electrification education to customers where they are and stand out at events where customers may not otherwise be thinking about energy.

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 adopts the findings set forth above.

Section 2. THE CEO, or their delegate, is hereby authorized to negotiate and execute an agreement for the construction and implementation of the all-electric

home with total compensation not to exceed \$350,000, subject to the approval of the General Counsel.

ADOPTED AND APPROVED this 14th day of June 2023.

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	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Clerk



Staff Report – Item 1h

Item 1h: Authorize the Chief Executive Officer to Execute an Amendment to the 2022-2023 Climate Corps Fellowship Agreement with Strategic Energy Innovations

From: Girish Balachandran, CEO

Prepared by: Adam Selvin, Director of Energy Services and Community Relations

Date: 6/14/2023

RECOMMENDATION

Staff recommends the SVCE Board of Directors authorize the CEO to execute an amendment to the 2022-2023 Climate Corps Fellowship Agreement with Strategic Energy Innovations, extending the term through December 31, 2023 and increasing compensation not to exceed a limit of \$184,765. The amendment would extend the term of one Climate Corps Fellow for an additional 6 months to provide continuing service to SVCE's fleet electrification efforts.

BACKGROUND

SVCE was introduced to Strategic Energy Innovations (SEI) and the Climate Corps fellowship program in 2017 through the City of Cupertino's Office of Sustainability, who had a fellow focused on outreach projects for SVCE's startup phase. Since 2017, SVCE has hosted Climate Corps fellows on the Energy Services and Community Relations team primarily focused on outreach and educational initiatives. The 2022-2023 fellowship cycle started in September 2022 and runs until June 2023. With the initial agreement, SVCE hosted two fellows, one under the Energy Services and Community Relations team and one under the Decarbonization Policy and Programs team.

SEI's services included recruitment of the fellows along with preliminary interviews, monthly trainings for fellows, and opportunities for professional development. The services provided helped staff with outreach, communications efforts, report preparation, and any other needs the organization has for program development and marketing.

ANALYSIS & DISCUSSION

Aligned with SVCE's mission to reduce the dependence on fossil fuels and fight climate change locally, the Climate Corps fellowship program focuses on advancing sustainable solutions with organizations while fostering emerging leaders. The award-winning Climate Corps fellowship program provides professional development opportunities in the sustainability and energy fields by connecting young professionals to work with companies, agencies and local governments on projects that address climate change issues. Hosting Climate Corps fellows not only helps individuals interested in the energy field gain industry experience, but also helps SVCE to continue to reach the organization's goals set forth in the adopted strategic plan.

The current 2022-2023 fellowship cycle is set to expire on June 30, 2023. With the proposed amendment, SVCE intends to extend the term for one current fellow, Alhad Dighe, for an additional six months, up to December 31, 2023 and add \$45,765 for the continuation of the fellowship stipend.

Agenda Item: 1h**Agenda Date: 6/14/2023**

Alhad has served the last 10-months as the Programs Fleet Electrification and Climate Action Fellow, focusing on encouraging and supporting the electrification of public sector and private sector fleets around Silicon Valley through research directly with fleet managers and representatives.

Since joining SVCE as a SEI Climate Corps fellow, Alhad has demonstrated exceptional dedication, talent, and a strong commitment to our mission of addressing climate change and fleet electrification challenges and solutions. In his role he has been able to provide fresh perspectives and innovative ideas. His analytical skills and data-driven approach have helped identify new opportunities for fleet electrification improvements.

Considering Alhad's exceptional performance and the significant impact he has made during his fellowship, an extension of six months would not only benefit our organization but also provide Alhad with an opportunity to continue his valuable contributions to our ongoing initiatives. An extension will also provide an opportunity for Alhad to further develop his skills and expertise, making him even more of an asset to our organization and the broader sustainability community.

STRATEGIC PLAN

Extending the current fellow help achieve the following goals from the October 2022 Board-adopted Strategic Plan.

- Goal 3: Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives.

- Goal 6: Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices

- Goal 7: Support communication and engagement with public, private, and non-profit stakeholders to leverage our decarbonization efforts.

- Goal 15: Build and maintain a high-performing team to be an employer of choice

ALTERNATIVE

The alternative to not extending the fellowship agreement is to reprioritize existing staff work to accommodate the additional fleet electrification activities.

FISCAL IMPACT

The fiscal impact of this extension agreement would be \$45,765 through December 31, 2023, half of which (July – September) will be covered by existing funding allocated for temporary staff in the FY 2022-23 budget, inclusive of the Climate Corps fellowships. The second half (October – December) would be funded through similar funds to be proposed in the FY2023-24 budget, subject to continued Board funding approval.

ATTACHMENTS

1. SEI Climate Corps Fellowship Amendment
2. SEI Climate Corps Fellowship Agreement for 2022-23
3. Fleet Electrification Fellow Job Description

FIRST AMENDMENT TO AGREEMENT WITH STRATEGIC ENERGY INNOVATIONS

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and STRATEGIC ENERGY INNOVATIONS entered into that certain agreement entitled CLIMATE CORPS FELLOW HOSTING SERVICES, effective on May 11, 2022, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and STRATEGIC ENERGY INNOVATIONS 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 1, 2022, and shall terminate on December 31, 2023, 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 eight-four thousand seven hundred sixty-five dollars and no/100 (\$184,765.00) based on the rates and terms set forth in Exhibit “C,” which is attached hereto and incorporated herein by this reference.

3. EXHIBIT B SCHEDULE OF PERFORMANCE section of Original Agreement shall be amended to read as follows:

Task	Begin	Complete
1. Fellow Interview and Recruitment	May 2022	August 2022
2. Fellowship Cycle	September 2022	June 2023
3. Fellowship Extension – 6 months (Alhad Dighe)	July 2023	December 2023

4. EXHIBIT C COMPENSATION section of Original Agreement shall be amended to read as follows:

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 eight-four thousand seven hundred sixty-five dollars and no/100 (\$184,765.00), 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.

Original Agreement

Task	Estimated Budget
1. Fellow Position Fee – Fellow 1	\$ 46,500
2. Fellow Living Stipend – Fellow 1	\$20,000
3. SEI Administrative Costs – Fellow 1	\$3,000
4. Fellow Position Fee – Fellow 2	\$46,500
5. Fellow Living Stipend – Fellow 2	\$20,000
6. SEI Administrative Costs – Fellow 2	\$3,000
Total	\$139,000

Amendment

Task	Estimated Budget
1. Fellow Position Fee – Fellow 1	\$ 46,500
2. Fellow Living Stipend – Fellow 1	\$20,000
3. SEI Administrative Costs – Fellow 1	\$3,000
4. Fellow Position Fee – Fellow 2	\$46,500
5. Fellow Living Stipend – Fellow 2	\$20,000
6. SEI Administrative Costs – Fellow 2	\$3,000
7. Fellow 6-month extension	\$45,765
Total	\$184,765

5. This Amendment shall be effective on July 1, 2023.

6. 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.

7. 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

Adam Selvin, Director of Energy Services & Community Relations

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
STRATEGIC ENERGY INNOVATIONS

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
STRATEGIC ENERGY INNOVATIONS
FOR
CLIMATE CORPS FELLOW HOSTING SERVICES**

THIS AGREEMENT, is entered into this 11th day of May 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority" or "Partner"), and STRATEGIC ENERGY INNOVATIONS, a nonprofit organization whose address is 100 Smith Ranch Rd. #124 San Rafael, CA 94903 (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 Climate Corps fellow hosting 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 1, 2022, and shall terminate on June 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. Exhibit A also includes tasks to be performed by Authority. For purposes of this Agreement, Fellow is an employee/agent of Consultant.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one hundred and thirty-nine thousand dollars and no/100 (\$139,000.00) 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. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify Authority and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those Authority agents serving as independent contractors in the role of Authority officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

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 for Authority by Fellow, as defined in Exhibit A, pursuant to or in connection with this Agreement, shall be the exclusive property of Authority, and all publication rights are reserved to Authority. All training and professional development materials and documents prepared by Consultant shall remain the exclusive property of Consultant.

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. Nathan McKenzie (Consultant Representative") shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **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’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:
Nathan McKenzie
Strategic Energy Innovations
100 Smith Ranch Rd. #124
San Rafael, CA 9403

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. 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.

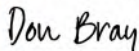
37. **DRAFTING PARTY**

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:

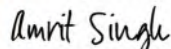


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Don Bray, Director of Account Services and Community Relations

RECOMMENDED FOR APPROVAL

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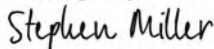


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Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
Strategic Energy Innovations

DocuSigned by:



By:

Name: Stephen Miller

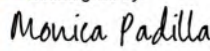
Title: Deputy Director

Date: 5/17/2022

SILICON VALLEY CLEAN ENERGY
AUTHORITY

A Joint Powers Authority

DocuSigned by:



By:

Name: Monica Padilla

Title: COO/Director of Power Resources

Date: 5/20/2022

APPROVED AS TO FORM:

DocuSigned by:

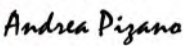


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Counsel for Authority

ATTEST:

DocuSigned by:



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Authority Clerk

Exhibit A
Scope of Services

Through Climate Corps, SEI agrees to:

- Recruit and assist in selection of two Fellows for a commitment of 1,756 total hours over a period of 10 months for each Fellow.
 - o 1,464 hours of on-site service with Partner (“on-site hours”)
 - o 132 hours of training led by SEI (“training hours”)
 - o 160 hours personal time off (“PTO hours”)
- Train and support the selected Fellows with a comprehensive training program that includes a training manual, a multi-day orientation led by an array of experts, monthly trainings, a mid-year two-day retreat, and two Professional Development Assessment reviews.
- Work with the Partner to develop a specific Fellowship Scope for specific Partner initiatives that aligns with Climate Corps goals and defines the Training Plan for the Fellows.
- Provide assistance in defining and developing metrics for the Fellow to measure and track the progress of project activities throughout their Fellowship.
- Provide monthly follow-ups to review progress with Site Supervisor and Fellows.
- Define and implement any corrections to Fellows’ plan determined to be necessary based on feedback collected from Fellows and Partner.

Partner agrees to:

- Take part in the recruitment and interview process to identify Fellows best fitted for the specific projects' needs, with the understanding that Partner has right of refusal of any proposed Fellows.
- Provide one to three specific climate resiliency initiatives that each Fellow can work on during their term of service.
 - o Initiatives must be well-defined, approved for implementation, and include specific learning objectives.
 - o Partner Agency will work with SEI to finalize a mutually agreed-upon Fellowship Scopes no later than one month after the Fellows arrives on site.
- Assign Site Supervisors who will be available to meet at least weekly with the Fellows for one-on-one project meeting time, coordinate other necessary staff supervision needed for successful implementation of the Fellowship Scope.
- Support Fellows to complete monthly reporting to SEI indicating whether progress is being made on the initiatives.
- Provide feedback on Program and Fellows effectiveness by:
 - o Filling out and submitting a Professional Development Assessment providing feedback on Fellows activities two times a year;
 - o Participating in program-wide conference calls to discuss program progress; and
 - o Responding to Partner Agency feedback surveys as requested.

- Refrain from using the Fellows for displacement of a Partner Agency employee during the Fellowship term.
- Allow SEI to share results from this program through grant reporting, program marketing, and fundraising.
- Provide program-wide support through either:
 - o Sponsoring a venue and staff presentations for a monthly training event for all Fellows; or
 - o Participating in a program sponsored training session or professional development event.
 - o Being receptive to informational interview requests from 1 or more current Fellow

Program Plan

Fellow service information

[A] Number of Fellows	2
Service Term	Full Cycle: September 1, 2022 to June 30, 2023
Standard Hours	<p>Full Cycle: 1,764 total hours, allocated as follows:</p> <ul style="list-style-type: none"> • 1,464 hours of on-site service with Partner (“on-site hours”) • 140 hours of training led by SEI (“training hours”) • 160 hours of vacation, holiday and sick time (VHS)

Position fee

[B] Amount	\$46,500 per non-profit Fellow
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Additional funding

[C] Amount	\$20,000 per non-profit Fellow
Use of additional funds	<p>[Living Stipend: Additional funds will go towards enhancing Fellow’s Living Stipend. Funds will be paid out to Fellow twice a month as part of the Fellow’s regular stipend checks.]</p>
[D] Administration fee	Partner will pay to SEI a fee equal to 15% of the amount of additional funds.
Timing	<p>[Additional funds to be held in a reimbursement account are due at the same time as the first installment of the Program fee.]</p> <p>[Partner will pay additional funds and the administration fee promptly following receipt of an invoice from SEI.]</p>

Total fee

Amount	\$ 139,000
Timing	Partner will pay the fee in two installments: <ul style="list-style-type: none">• \$69,500 due October 15, 2022• \$69,500 due February 15, 2023

Partner contact information

Contact person and title	Pamela Leonard
Email address	pamela.leonard@svcleanenergy.org
Phone number	(408) 721-5301 x1004
Mailing address	333 W. El Camino Real, Ste. 330 Sunnyvale, CA 94087
Billing contact information (if different from above)	
P.O. Number (if applicable)	

SEI contact information

Contact person and title	Nathan McKenzie, Program Director
Email address	nathan@seiinc.org
Phone number	415-507-1432
Mailing address	100 Smith Ranch Rd. #124 San Rafael, CA 94903

1. Additi on al Te rm s	<p>2. <u>Program Initiation</u></p> <p>1. Recruitment and Selection SEI will recruit, screen, and select a Fellow to serve at Partner during the service term set out in the Program Plan (“Service Term”). Partner will assist in the recruitment and selection of Fellow, including, without limitation, developing a job description specific to Partner’s activities and needs, conducting interviews, and participating in the final selection. If Partner ultimately fails to select a Fellow, Partner will pay to SEI a \$2,500 fee for the recruiting effort promptly following receipt of an invoice from SEI.</p> <p>2. Employment Relationship SEI and Partner acknowledge that Fellow is an employee of SEI. SEI will notify each Fellow that Fellow is not an employee of Partner.</p> <p>3. Fellow Orientation At the start of the Service Term, SEI will provide Fellow with an orientation to the Program. Partner will provide Fellow with an orientation to Partner’s mission, programs, operations, systems, and facilities.</p> <p>4. Fellowship Scope Partner will cooperate with SEI to develop a written scope of work (“Fellowship Scope”) for each Fellow. The Fellowship Scope will: (a) outline the training plan for the Fellow, (b) describe one to three specific climate change resiliency projects that the Fellow will work on during the Service Term, and (c) define anticipated deliverables and Fellow performance and learning goals. Partner and SEI will complete the Fellowship Scope within one month after the Fellow’s first day of service.</p> <p>3. <u>Training and Support</u></p> <p>1. Fellow Training SEI will train and support the Fellow with a training program that includes: monthly trainings, a mid-year two-day retreat, an end of program symposium, and two professional development assessment reviews. Time spent by the Fellow in this training program will count as training hours under the Program Plan.</p> <p>2. Training Calendar SEI will provide a calendar of training activities to Partner and will notify Partner of any schedule changes in advance.</p> <p>3. Ongoing Support and Assistance SEI will help Partner and Fellow develop metrics for evaluating the Fellow’s progress. SEI will schedule monthly sessions with Fellow and Partner to review the Fellow’s progress, and will assist the Fellow and Partner with defining or implementing any changes to the Fellowship Scope or other documents as appropriate.</p> <p>4. Partner’s Program-wide Support Partner will carry out Program-wide activities reasonably requested by SEI, such as: (a) sponsoring a venue and staff presentations for a monthly training event for all Fellows, (b) participating in a Program-sponsored training session or</p>
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professional development event, or (c) accepting informal interview requests from one or more other Fellows in the Program.

5. Ownership of Materials

For clarity, SEI owns all training and professional development materials and documents.

6.

7. Fellow Responsibilities, Scheduling, and Supervision

8. Fellow Responsibilities

Partner may assign specific responsibilities to Fellow so long as they are consistent with the Fellowship Scope.

Fellow shall be required to attend or complete training as directed by Partner regarding data security, and confidentiality and other Partner policies and comply with such policies for the duration of the Term.

9. Payment to Fellow; Additional Funding

SEI will pay a living stipend (“Living Stipend”) and end of program award (“End of Program Award”) to Fellow during the Service Term. Partner may provide additional funding for Fellow as may be set out in the Program Plan.

10. Hours and Work Schedule

The standard number of service hours for Fellows (“Standard Hours”) is set out in the Program Plan. Partner will provide Fellow with a reasonably consistent schedule during the Service Term so that Fellow can fulfill his or her Target Hours. If a Fellow is required serve as a juror, they will log that time as on-site hours with Partner and continue receiving a living allowance, healthcare coverage and, if applicable, childcare coverage regardless of any reimbursements for incidental expenses received from the court.

11. Work Environment and Resources

When in-person work is allowed, Partner will provide Fellow with adequate workspace, a reasonably comfortable work environment, access to a computer with internet connectivity, and other support resources reasonably necessary for Fellow to complete his or her work.

While working remotely, individual Site Supervisors will plan for IT logistics like computer, WiFi, and other technological equipment needed at the Fellows’ home, account and software access, and/or setting up remote VPNs. Fellows should alert their Site and Regional Supervisors immediately if they face any logistical hurdles to remote work, such as WiFi challenges, remote account access or VPNs.

We recognize that sites will have different timelines and protocols for reopening. Site Supervisors, please notify your Climate Corps Regional Supervisor in advance via email if your site plans to reopen and you will be expected to physically report to service. Please share: (1) Date of expected reopening and date you will begin to report to work on site; (2) Health and safety measures in place to minimize the threat of exposure (i.e. distancing, availability of PPE and disinfecting supplies). If your site organization has a COVID-19 policy, please share.

12. Fellow Attendance at Climate Corps Events

Partner will allow Fellow to attend all Program events, including, without limitation, orientation, monthly trainings, retreats, field trips to other Climate Corps partner sites, and the Climate Corps Symposium, so that Fellow can fulfill his or her Program training requirements and enhance his or her professional development. Time spent by the Fellow at these events will count as training hours under the Program Plan.

13. Site Supervisor

Partner will designate a paid staff supervisor ("Site Supervisor") to supervise Fellow's day-to-day activities and performance. The responsibilities of Site Supervisor include, without limitation: (a) guiding Fellow towards achieving the goals set out in the Fellowship Scope, (b) meeting with Fellow one-on-one at least weekly to discuss project(s), and (c) helping Fellow complete monthly reporting to SEI to track the progress made on the project(s). If Partner changes the Site Supervisor, Partner will provide SEI with at least 30 days' written notice setting out the name and title of the new Site Supervisor, the reason for the change, and the expected impact, if any, on the Fellowship Scope or Fellow.

4. Reporting and Recordkeeping**1. Program Reports**

Partner will complete and submit all Program forms, surveys, assessments, progress reports, Fellow evaluations, and other documents requested by SEI, including a biannual professional development assessment providing feedback on Fellow activities. SEI may share results related to the Program for the purpose of grant reporting, program marketing, and fundraising.

2. Site Visits

SEI may visit Partner sites and film, photograph, and otherwise document Program and Fellow activities during normal business hours and with reasonable advance notice.

3. Recordkeeping

SEI and Partner will each maintain records relating to its Program responsibilities in a manner such that the other can evaluate compliance with this MOU. SEI and Partner will make those records available for review by the other on reasonable notice during the term of this MOU and for a period of three years after its termination.

5. Communication**1. Program Contacts**

SEI and Partner will each appoint one individual to act as principal contact person and to coordinate activities in connection with the Program. The initial appointees are identified in the Program Plan. SEI and Partner each may change its contact person at any time and will so advise the other.

2. Cooperation

SEI and Partner acknowledge Fellow's success in the Program depends in large part on the effectiveness of collaboration between the parties. Both parties will provide timely access to data, information, and personnel, ensure the accuracy and

completeness of data and information provided, and promptly notify one another about challenges, concerns, and successes.

3. Fellow Performance

SEI cannot guarantee specific performance results for any Fellow. Partner will notify SEI immediately of any significant problems with Fellow's professional performance or conduct, including, without limitation, failure to report to a site or unprofessional behavior. SEI will work with Partner to provide assistance or discuss an appropriate response.

Exhibit B
Schedule of Performance

This schedule may be modified with the written approval of the Authority.

Task	Begin	Complete
1. Fellow Interview and Recruitment	May 2022	August 2022
2. Fellowship Cycle	September 2022	June 2023

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 one hundred and thirty-nine thousand dollars and no/100 (\$139,000.00), 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.

Task	Estimated Budget
1. Fellow Position Fee – Fellow 1	\$ 46,500
2. Fellow Living Stipend – Fellow 1	\$20,000
3. SEI Administrative Costs – Fellow 1	\$3,000
4. Fellow Position Fee – Fellow 2	\$46,500
5. Fellow Living Stipend – Fellow 2	\$20,000
6. SEI Administrative Costs – Fellow 2	\$3,000
Total	\$139,000

Invoices

Authority will pay the Consultant fee in two installments:

- \$69,500 due October 15, 2022
- \$69,500 due February 15, 2023

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 \$2,000,000 US per occurrence.

Climate Corps Description – Fleet Electrification Fellow

Do you want to be a part of an organization that is fighting climate change, accelerating electric innovation and reinvesting locally? Silicon Valley Clean Energy (SVCE), the community choice electricity provider for 13 communities in Santa Clara County. By providing carbon-free electricity, SVCE has reduced local, energy-related emissions by 35% from the 2015 baseline and is continuing to reduce emissions through innovative community programs focused on building and transportation electrification.

Under staff direction, the fellow will play a pivotal role in encouraging and supporting the electrification of public sector and private sector fleets across Silicon Valley. With transportation emissions accounting for the majority of greenhouse gas emissions in the area, electrifying fleets will result in direct, significant decreases in emissions. In addition, fleet electric vehicle use can demonstrate the practicality of electric vehicles for everyday use and will catalyze additional electric vehicle adoption.

The fellow will research successful fleet electrification efforts and interface with local government representatives and private sector fleet managers on opportunities to invest in both vehicle and charging infrastructure. The research performed during this fellowship will directly inform current and near-term program design and budgetary allocations.

The fellow will work under the direction of SVCE staff to research, assess and analyze funding and finance opportunities for fleet electrification. The work performed for this fellowship requires strong research skills, organization, and a self-starter attitude.

Essential Duties

The successful fellow will:

- Assess the baseline state of fleet electrification efforts in the SVCE service territory;
- Research fleet electrification projects completed by public agencies and private sector companies;
- Explore fleet electrification support programs initiated by other community choice energy agencies and other funders;
- Contact fleet managers in member agencies, other governmental/educational agencies and private sector companies to gauge interest in advancing fleet electrification;
- Pursue opportunities to match SVCE resources and other resources with fleet managers ready to engage in a fleet electrification planning and implementation efforts;
- Begin program implementation; and
- Evaluate and chronicle program successes, lessons learned, and future opportunities.

Qualifications

Qualified candidates should be a recent graduate from an academic institution with a degree that will provide the specific skills and knowledge that will contribute to available work assignments.

Additionally, we are looking for someone who is passionate about learning, not afraid to be challenged and excited by the opportunity to apply acquired academic knowledge to real world business endeavors.

The following skills are also highly desired:

- Basic understanding of principles of transportation and building decarbonization

- Excel and PowerPoint experience
- Exceptional research skills
- Ability to run cost-benefit analysis, Net Present Value calculations, and risk analyses
- Develop other qualitative and quantitative metrics to compare and prioritize opportunities
- Knowledge of California regulatory and legislative bodies and processes governing energy, transportation, and climate change
- Educational focus of finance, economics, public policy, business administration or related field



Staff Report – Item 1i

Item 1i: Authorize the Chief Executive Officer to Execute Amendment to Agreement with PFM Asset Management for Investment Advisory Services to Allow SVCE to Enter into an Agreement with US Bank for Custodial Bank Services

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO, and Director of Administrative Services
Kevin Armstrong, Deputy Director of Administrative Services

Date: 6/14/2023

RECOMMENDATION

Staff recommends that the Board authorize the CEO to execute an amendment to the current agreement with PFM Asset Management ("PFMAM") to allow SVCE to enter into an agreement for custodial bank services with US Bank through the PFMAM-administered California Asset Management Program ("CAMP").

BACKGROUND

In 2021, staff conducted a request for proposals (RFP) for Investment Advisory Services, and selected PFMAM as its preferred investment advisor. In May 2022, the CEO executed an agreement with PFMAM for Investment Advisory Services, with an initial scope limited to preparatory work prior to the Board's adoption of a revised investment policy. In October 2022, the Board updated Financial Policy #11, the Investment Policy, to increase the available investment options for SVCE's financial reserves. Many of the available investment options require the services of a custodial bank to hold SVCE's assets, and in February 2023, staff conducted another RFP to solicit custodial bank services. SVCE received only one proposal in response to the RFP, from Principal Financial Services. Inquiries into the tepid response indicated that a combination of withdrawals from the marketplace, the size of SVCE's investment portfolio, and SVCE's public nature limited the responses received. With only one option, SVCE cancelled the RFP and reached out to banks to solicit offers directly.

ANALYSIS & DISCUSSION

SVCE's current investment policy enables SVCE to invest in products allowed under the California Government Code (refer to Attachment 3). PFMAM, as SVCE's investment advisor, will never take control of SVCE's cash or investments. As recommended by the Government Finance Officers Association (GFOA) and industry best practices, SVCE will contract with a bank to provide custody services for SVCE's investments. This separation of the safekeeping function from the investment function is one of the most important protections and controls against fraud.

After cancelling the RFP in February 2023, SVCE reached out directly to banks and received two additional pricing proposals, both from US Bank. One proposal was for services directly through US Bank, the second for services under a shared institutional agreement through CAMP. As a CAMP shareholder, SVCE can take advantage of this shared agreement, which provides custody services to both the CAMP pool itself and SVCE's investments, with Custodial fees paid monthly as a percentage of the average daily assets under custody. A table comparing the custodial bank fee schedules is provided here:

Agenda Item: 1i**Agenda Date: 6/14/2023**

		Fees			
Assets	SVCE \$	Principal	US BANK	US Bank (CAMP)	
First \$50 million	\$ 50,000,000	1.50 bps	1.00 bps	0.33bps	
Next \$50 million	\$ 50,000,000	1.50 bps	0.75 bps	0.33bps	
Over \$100 million	\$ 10,000,000	1.50 bps	0.50 bps	0.33bps	
Minimum Fee		\$15,000	\$10,000	\$200	
Fee on \$110MM		\$16,500	\$9,250	\$3,830	

Of the three proposals, from Principal (direct), US Bank (direct), and US Bank (shared via CAMP), the shared CAMP proposal offers the lowest fee percentage, the lowest minimum fee, and the simplicity of using the CAMP liquid pool as the sweep account to handle cash between investments, thereby reducing the number of interbank transfers needed to modify the investment portfolio. SVCE originally estimated custodial bank fees to be between \$4,000 and \$8,000 annually, and the fee proposal for US Bank services through CAMP falls within that expected range. Over five years, fees are estimated at \$18,000 to \$25,000.

Once SVCE engages with US Bank for custodial services through CAMP, PFMAM will begin to manage the Authority's investment portfolio as the Authority's fiduciary pursuant to the specific investment objectives stated in the adopted investment policy. Once PFMAM assumes management of SVCE's funds SVCE will begin to pay a monthly fee to PFMAM based on the average daily assets under management per the annual fee schedule below:

- Initial \$100 million: 8 basis points (0.08%)
- Next \$100 million: 6 basis points (0.06%)
- Above \$200 million: 5 basis points (0.05%)

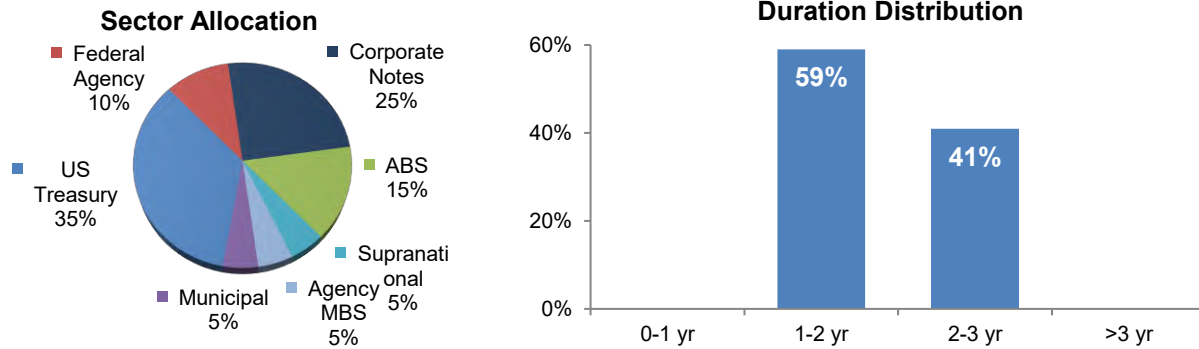
The minimum annual fee is \$25,000.

SVCE will receive timely and comprehensive reporting from both the custody bank and PFMAM so that SVCE can review account information, transaction activity, and portfolio performance. PFMAM will also be available to meet with SVCE staff and present to the Finance and Administration Committee and Board of Directors as requested.

As a refresher, SVCE staff are proposing an initial investment maturity range of 0-to-3 years; in other words, the securities pay back the principal within three years. The funds held in reserves are primarily to manage adverse risk events; therefore, the investment horizon should be reasonable, and staff can better model cashflows over this time horizon.

Based on a cash flow analysis (Attachment 4) conducted in October 2022, staff determined that \$25 million is sufficient to hold as cash for normal operations. There's also a need to keep an additional \$30 million in highly liquid investments where funds could be available overnight, such as the California Asset Management Program (CAMP), which has a reasonably attractive return (yield as of June 2 was 5.21%). The \$30 million in highly liquid assets will enable SVCE to respond to volatility, particularly collateral calls from CAISO and other counterparties.

SVCE's funds allocated to maturities of 0- to 3- years under PFMAM's management will be invested in individual fixed-income securities with an initial recommended 1- to 3-year maturity structure. The portfolio will be of high credit quality and well diversified by sector, issuer, and maturity. It will comply with SVCE's adopted investment policy and the California Government Code. The charts below illustrate a sample target portfolio that PFMAM proposes to create and manage for SVCE.

Agenda Item: 1i**Agenda Date: 6/14/2023**

The portfolio's performance will be measured and presented quarterly relative to an agreed-upon market benchmark.

STRATEGIC PLAN

The recommendations support SVCE Strategic Plan Goal 15 – “Commit to maintaining a strong financial position.”

ALTERNATIVE

The alternative to the recommendation would be to continue to hold SVCEs investments in CAMP, LAIF, and River City Bank, limiting the potential investment returns SVCE could earn from its reserves.

FISCAL IMPACT

Pursuing the above strategy could increase potential earnings for SVCE with more investment portfolio diversification than currently available through CAMP, LAIF, and River City Bank. A precise estimate is not possible and would depend on the portfolio strategy and market conditions.

ATTACHMENTS

1. Amendment to Agreement with PFM Asset Management LLC for Investment Advisory Services
2. Original Agreement with PFM Asset Management LLC for Investment Advisory Services
3. Investments allowed under California Government Code
4. October 2022 Cashflow Analysis
5. CAMP Custody Agreement with US Bank (with Amendments)

**FIRST AMENDMENT
TO
AGREEMENT FOR INVESTMENT ADVISORY SERVICES**

THIS FIRST AMENDMENT, entered into as of the 14th day of June, 2023 (the “First Amendment”), by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (hereinafter the “Authority”), and PFM ASSET MANAGEMENT LLC, a Delaware limited liability company with an office in San Francisco, California (hereinafter the “Consultant”).

WHEREAS, Authority and Consultant entered into an Agreement for Investment Advisory Services, dated as of May 9, 2022 (the “Original Agreement”), whereunder Authority engaged Consultant to perform investment advisory services, as specified therein; and

WHEREAS, Authority has determined to open an account with the California Asset Management Trust (the “Trust”), under the Trust’s California Asset Management Program (“CAMP” or the “Program”); and

WHEREAS, Authority and Consultant desire to amend the Original Agreement to make provision for such investment in the Program, including investing Managed Funds (as such term is defined in the Original Agreement) in an Individual Portfolio available under the Program; and

WHEREAS, the Original Agreement, as amended by this First Amendment, is referred to herein as the “Agreement”;

NOW, THEREFORE, Authority and Consultant, in consideration of the premises and mutual covenants herein contained, and intending to be legally bound, hereby agree as follows:

1. Section 38(A) of the Original Agreement is hereby amended and restated to provide as follows:

38. INVESTMENT ADVISOR PROVISIONS

A. Services of Consultant. Authority hereby engages Consultant to serve as investment advisor under the terms of this Agreement with respect to the Initial Funds and such other funds as Authority may from time to time assign by written notice to Consultant (collectively the “Managed Funds”), and Consultant accepts such engagement. In connection therewith, Consultant will provide investment research and supervision of the Managed Funds investments and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the Managed Funds assets. Consultant shall continuously

monitor investment opportunities and evaluate investments of the Managed Funds. Consultant shall furnish Authority with statistical information and reports with respect to investments of the Managed Funds. Consultant shall place all orders for the purchase, sale, loan or exchange of portfolio securities for Authority's account with brokers or dealers recommended by Consultant and/or Authority, and to that end Consultant is authorized as agent of Authority to give instructions as to deliveries of securities and payments of cash for the account of Authority to U.S. Bank National Association, Minneapolis, Minnesota the Program's custodian (the "Custodian"). Such custodial arrangements are subject to and governed by the terms and provisions of a Custody Agreement, dated as of January 10, 2013 (as the same may be amended from time to time, the "Custody Agreement"), which is incorporated herein by reference. A copy of the Custody Agreement is available from the Consultant in its capacity as Program administrator. A complete description of the Program is provided in the Information Statement dated January 12, 2023, as amended from time to time, and the amended and restated Declaration of Trust dated October 25, 2022, as amended from time to time, to which reference should be made for details. In connection with the selection of such brokers and dealers and the placing of such orders, Consultant is directed to seek for Authority the most favorable execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to Consultant by such brokers and dealers. The Custodian shall have custody of cash, securities and other assets of Authority. Consultant shall not take possession of or act as custodian for the cash, securities or other assets of Authority and shall have no responsibility in connection therewith. Authorized investments shall include only those investments which are currently authorized by the state investment statutes, the Authority's investment policy, and applicable covenants and as supplemented by such other written instructions as may from time to time be provided by Authority to Consultant. Consultant shall be entitled to rely upon Authority's written advice with respect to anticipated drawdowns of Managed Funds. Consultant will observe the instructions of Authority with respect to broker/dealers who are approved to execute transactions involving the Managed Funds and in the absence of such instructions will engage broker/dealers which Consultant reasonably believes to be reasonable, reputable, qualified and financially sound.

2. Section 38(F) of the Original Agreement is hereby amended and restated to provide as follows:

F. Books. Consultant shall maintain records of all transactions in the Managed Funds. Consultant shall provide Authority with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets

held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by Consultant and Authority. If applicable, for proceeds of tax-exempt debt issues invested under this Agreement, Consultant shall maintain appropriate records of all of its activities hereunder as may be required by the Internal Revenue Code of 1986, as amended, and related U.S. Treasury Regulations, and shall provide to the Program Rebate Calculation Agent all of those records of investment activity as may be necessary to prepare calculations of Authority's rebate liability.

3. The subsection in Exhibit B to the Original Agreement entitled "Invoices – Monthly Invoices", which currently reads as follows:

Invoices

Monthly Invoices

In order to request payment, Consultant shall submit monthly invoices to Authority describing the services performed and the applicable charges (include a statement indicating the basis upon which the fee was calculated). 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.

is hereby amended and restated to provide as follows:

Consultant shall prepare a bill for the investment management fee monthly and forward it and the monthly Custodian invoice to Authority for approval. Unless instructed otherwise within 15 calendar days of the postmark on that invoice, Consultant is herein authorized to charge Authority's associated Trust account and instruct the Custodian to disburse funds from that account. If sufficient funds are not available, Authority agrees to compensate Consultant from other sources within 30 calendar days of the postmark date. If either Consultant or the Custodian shall serve for less than the whole month, the compensation shall be pro-rated. Authority does not pay interest on past due amounts.

4. This Amendment shall become effective June 14, 2023.

5. Except as provided herein, all provisions of the Original Agreement shall remain in full force and effect.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their authorized representatives as of the date set forth in the first paragraph of this First Amendment.

PFM ASSET MANAGEMENT LLC

By:_____

Name: Monique Spyke

Title: Managing Director

SILICON VALLEY CLEAN ENERGY AUTHORITY

By:_____

Name:_____

Title:_____

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
PFM ASSET MANAGEMENT LLC
FOR
INVESTMENT ADVISORY SERVICES**

THIS AGREEMENT ("Agreement") is entered into this 9th day of May, 2022, by and between the SILICON VALLEY CLEAN ENERGY THORITY, an independent public agency, ("Authority"), and PFM Asset Management LLC, a Delaware limited liability company with an office in San Francisco, California (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 investment advisory services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM

The term of this Agreement shall commence upon execution of this Agreement, shall be for a three-year period and may be extended for an additional two-year period, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

A. Consultant shall perform each and every service set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference.

B. Notwithstanding anything in this Agreement to the contrary, Consultant's services shall be limited to the completion of item 1 in Exhibit "A" until such time that the Authority Board of Directors: (i) approves an investment policy prepared by Consultant and (ii) directs Consultant to engage in the full scope of work set forth in Exhibit "A." At such time that the Authority Board of Directors takes such actions, Consultant shall commence services pursuant to the full scope of work set forth in Exhibit "A." Consultant acknowledges and agrees that Consultant is only paid for assets under management as described in Exhibit "B" and that Consultant shall not be compensated for the services provided pursuant to item 1 in Exhibit "A." In the event that the Authority Board of Directors does not: (i) approve an investment policy prepared by Consultant, and (ii) direct Consultant to engage in the full scope of work set forth in Exhibit "A," the Authority

may immediately terminate this Agreement.

3. COMPENSATION TO CONSULTANT

Consultant shall be compensated for services performed pursuant to this Agreement based on the rates and terms set forth in Exhibit "B," 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 employment 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. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify Authority and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those Authority agents serving as independent contractors in the role of Authority officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the negligent acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

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.

B. 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.

C. 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 "C," which is attached hereto and incorporated herein by this reference. The required General Liability, Automobile Liability and Workers Compensation 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 before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the Authority by 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 maintain the foregoing insurance, Authority shall be permitted but not obligated, to terminate this Agreement or 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, which costs shall not be commercially unreasonable, 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 the General Liability and Automobile Liability insurance coverages 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

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.

A. 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.

B. Consultant shall, at such time and in such form as Authority may require, furnish reports concerning the status of services required under this Agreement.

C. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

D. 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, unless such disclosure is required by law or by regulatory or judicial process.

E. 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. Monique Spyke, Managing Director (“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 or regulatory or judicial process requires disclosure and Consultant is legally permitted to notify Authority of such requested 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, if legally permitted, gives Authority notice of such court order or subpoena.

B. If legally permitted, 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 "D," 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:
Monique Spyke
Managing Director
PFM Asset Management LLC
1 California Street, Suite 1000
San Francisco, CA 94111

With a copy to:
PFM Asset Management LLC
213 Market Street
Harrisburg, PA 17101
Attn: Chief Administrative Officer

19. TERMINATION

In the event a Party fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, such Party shall be deemed in default in the performance of this Agreement. If the defaulting Party fails to cure the default within the time specified (which shall be determined by the non-defaulting Party but shall be not less than 10 days) and according to the requirements set forth in non-defaulting Party's written notice of default, and in addition to any other remedy available to the non-defaulting Party by law, the Authority Representative or Consultant Representative, as applicable, 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 sixty 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.

38. INVESTMENT ADVISOR PROVISIONS

A. Services of Consultant. Authority hereby engages Consultant to serve as investment advisor under the terms of this Agreement with respect to the funds described in this Agreement and such

other funds as Authority may from time to time assign by written notice to Consultant (collectively the "Managed Funds"), and Consultant accepts such appointment. In connection therewith, Consultant will provide investment research and supervision of the Managed Funds investments and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the Managed Funds assets. Consultant shall continuously monitor investment opportunities and evaluate investments of the Managed Funds. Consultant shall furnish Authority with statistical information and reports with respect to investments of the Managed Funds. Consultant shall place all orders for the purchase, sale, loan or exchange of portfolio securities for Authority's account with brokers or dealers recommended by Consultant and/or Authority, and to that end Consultant is authorized as agent of Authority to give instructions to the custodian designated by Authority (the "Custodian") as to deliveries of securities and payments of cash for the account of Authority. In connection with the selection of such brokers and dealers and the placing of such orders, Consultant is directed to seek for Authority the most favorable execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to Consultant by such brokers and dealers. The Custodian shall have custody of cash, assets and securities of Authority. Consultant shall not take possession of or act as custodian for the cash, securities or other assets of Authority and shall have no responsibility in connection therewith. Authorized investments shall include only those investments which are currently authorized by the state investment statutes and the applicable covenants and as supplemented by such other written instructions as may from time to time be provided by Authority to Consultant. Consultant shall be entitled to rely upon Authority's written advice with respect to anticipated drawdowns of Managed Funds. Consultant will observe the instructions of Authority with respect to broker/dealers who are approved to execute transactions involving the Managed Funds and in the absence of such instructions will engage broker/dealers which Consultant reasonably believes to be reputable, qualified and financially sound.

B. Pool Compensation. Assets invested by Consultant under the terms of this Agreement may from time to time be invested in (i) a money market mutual fund managed by an entity affiliated with Consultant or (ii) a local government investment pool managed by Consultant (either, a "Pool") or in individual securities. Average daily net assets subject to the fees described in this Agreement shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for Consultant and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

C. Registered Advisor; Duty of Care. Consultant hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. Consultant shall immediately notify Authority if at any time during the term of this Agreement it is not so registered or if its registration is suspended. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which Authority may have under any federal securities laws. Authority hereby authorizes Consultant to sign I.R.S. Form W-9 on behalf of Authority and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement. Consultant shall provide Authority a copy of such form W-9.

D. Consultant's Other Clients. Authority understands that Consultant performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. Authority agrees that Consultant, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Managed Funds. Consultant shall not have any obligation to purchase, sell or exchange any security for the

Managed Funds solely by reason of the fact that Consultant, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

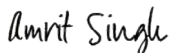
E. Disciplinary Actions. Consultant shall promptly give notice to Authority if Consultant shall have been found to have violated any state or federal securities law or regulation in any final and unappealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission ("SEC") or any other agency or department of the United States, any registered securities exchange, the Financial Industry Regulatory Authority ("FINRA"), or any regulatory authority of any State based upon the performance of services as an investment advisor.

F. Books. Consultant shall maintain records of all transactions in the Managed Funds. Consultant shall provide Authority with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by Consultant and Authority.


G. Brochure and Brochure Supplement. Consultant warrants that it has delivered to Authority prior to the execution of this Agreement Consultant's current SEC Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). Authority acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.

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

RECOMMENDED FOR APPROVAL

DocuSigned by:

A88F1D1F92E8E467
Amrit Singh, Chief Financial Officer/Director of Administrative Services

PFM ASSET MANAGEMENT LLC

DocuSigned by:

By: _____
9F3C69247B994AC...
Name: Monique Spyke
Title: Managing Director
Date: 5/9/2022

SILICON VALLEY CLEAN ENERGY AUTHORITY

A Joint Powers Authority


DocuSigned by:

By: _____
5CA64B9AC4C24C3...
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 5/9/2022

Exhibit A
Scope of Services

Specific responsibilities of the selected investment adviser will include:

1. At the start of the engagement assist the Authority staff in preparing an updated and revised investment policy for review by the Finance and Administration Committee and for approval by the Board of Directors. This step will include a study sessions with the Finance and Administration Committee and the full Board as requested by the Authority staff.
2. Annually review the Authority's then current investment policy and discuss areas for improvement with staff that meet the Authority's risk tolerance.
3. Provide assistance in developing and implementing an investment strategy that will maintain or enhance portfolio quality and performance within the parameters of the Authority's Investment Policy and cash flow needs.
4. Manage the Authority's investment portfolio as the Authority's fiduciary and pursuant to the specific investment objectives stated in the adopted investment policy. Place all orders for the purchase and sale of securities, communicate settlement information to the Authority's staff or custodian and coordinate security settlement.
5. Ensure the portfolio complies with all applicable laws and the Authority's Investment Policy including resolutions relating to the investment of public funds.
6. Provide the Authority with investment reports that shall include, but not be limited to the following:
 - a. Monthly holdings and transaction statements including detailed portfolio holdings and portfolio summary statistics.
 - b. Quarterly investment reports including a description of market conditions, investment strategies employed, performance, and suggested changes to investment strategy.
 - c. Annual portfolio performance reports, based on the Authority's fiscal year, including, but not limited to local and national economy, the Authority's portfolio holdings, performance objectives, and policy compliance.
7. Perform broker/dealer due diligence and maintain relations with the broker/dealer community.
8. Continually monitor market conditions and circumstances and report on any recommended changes to policies, strategies, and specific positions.
9. Attend Finance and Administration Committee and Board of Directors meetings as required.

10. Serve as a general resource to the Authority's staff for information, advice, and training regarding fixed-income investments. Communicate as necessary with the Authority staff to understand the Authority's investment operations.

Exhibit B **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.

For services provided by the Advisor pursuant to this Agreement, the Client shall pay the Advisor an annual fee, in monthly installments, based on the daily net assets under management according to the schedule below:

Average Assets Under Management Fees

Initial \$100 million 8 basis points (0.08%)

Next \$100 million 6 basis points (0.06%)

Above \$200 million 5 basis points (0.05%)

“Daily net assets” is defined to include the amortized value of securities, accrued interest and cash or any money market fund balance.

The minimum annual fee for assets under management is \$25,000, and such minimum annual fee shall be applied in equal monthly installments. For avoidance of doubt, in any month where the amount of the fee calculated under the schedule above is less than the amount of such equal monthly installment, then the amount of such equal monthly installment shall be applied.

Invoices

Monthly Invoices

In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges (include a statement indicating the basis upon which the fee was calculated). 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.

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 C
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 D
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 or as may be permitted by the Agreement.

Consultant shall, at all times and in perpetuity or until such time as such Confidential Information is no longer retained by Consultant pursuant to applicable regulatory record keeping requirements or Consultant’s internal document archiving requirements 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 Confidential 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 written evidence 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. The requirements set forth in the following sentences of this Section shall apply only to the extent that the services include handling credit card information,. 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.

4. 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, if legally permitted, notifies Authority promptly upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.
5. In the event that Consultant has actual knowledge of a negligent act or omission, error, misconduct, or breach that permits any external unauthorized access to, or that compromises 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 Authority's Data, Consultant shall, as applicable: (a) notify Authority as soon as practicable but no later than seventy-two (72) 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 as required by applicable law; (c) in the case of Confidential Information, (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, arising from Consultant's negligence; (g) assist the Authority with recreating lost Data if available through Consultant's disaster recovery plan, with such assistance provided at no additional cost to the 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 summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and other information reasonably 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, until such time as the requirements of Section 10 hereof have been satisfied.

6. 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.
7. 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.

8. If and only to the extent applicable to the services provided by Consultant hereunder, 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.
9. In addition to any other requirements set forth in the Agreement, within thirty (30) 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 an affidavit of destruction that all such tangible Confidential Information of Authority has been destroyed. The foregoing notwithstanding, copies of Confidential Information may be retained by Consultant for internal record-keeping in accordance with regulatory requirements and in connection with routine electronic archiving.
10. 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 (if and only to the extent that such Commission would have jurisdiction over the services to be performed by the Consultant hereunder) 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.
11. 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 unauthorized use or disclosure of Confidential Information.

FIGURE 1

**ALLOWABLE INVESTMENT INSTRUMENTS PER STATE GOVERNMENT
CODE (AS OF JANUARY 1, 2022)^A APPLICABLE TO ALL LOCAL AGENCIES^B**

See "Table of Notes for Figure 1" on the next page for footnotes related to this figure.

INVESTMENT TYPE	MAXIMUM MATURITY ^C	MAXIMUM SPECIFIED % OF PORTFOLIO ^D	MINIMUM QUALITY REQUIREMENTS	GOV'T CODE SECTIONS
Local Agency Bonds	5 years	None	None	53601(a)
U.S. Treasury Obligations	5 years	None	None	53601(b)
State Obligations— CA And Others	5 years	None	None	53601(c) 53601(d)
CA Local Agency Obligations	5 years	None	None	53601(e)
U.S Agency Obligations	5 years	None	None	53601(f)
Bankers' Acceptances	180 days	40% ^E	None	53601(g)
Commercial Paper—Non-Pooled Funds ^F (under \$100,000,000 of investments)	270 days or less	25% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53601(h)(2)(c)
Commercial Paper—Non-Pooled Funds (min. \$100,000,000 of investments)	270 days or less	40% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53601(h)(2)(c)
Commercial Paper— Pooled Funds ^I	270 days or less	40% of the agency's money ^G	Highest letter and number rating by an NRSRO ^H	53635(a)(1)
Negotiable Certificates of Deposit	5 years	30% ^J	None	53601(i)
Non-negotiable Certificates of Deposit	5 years	None	None	53630 et seq.
Placement Service Deposits	5 years	50% ^K	None	53601.8 and 53635.8
Placement Service Certificates of Deposit	5 years	50% ^K	None	53601.8 and 53635.8
Repurchase Agreements	1 year	None	None	53601(j)
Reverse Repurchase Agreements and Securities Lending Agreements	92 days ^L	20% of the base value of the portfolio	None ^M	53601(j)
Medium-Term Notes ^N	5 years or less	30%	"A" rating category or its equivalent or better	53601(k)
Mutual Funds And Money Market Mutual Funds	N/A	20%	Multiple ^{P,Q}	53601(l) and 53601.6(b)
Collateralized Bank Deposits ^R	5 years	None	None	53630 et seq. and 53601(n)
Mortgage Pass-Through and Asset-Backed Securities	5 years or less	20%	"AA" rating category or its equivalent or better	53601(o)
County Pooled Investment Funds	N/A	None	None	27133
Joint Powers Authority Pool	N/A	None	Multiple ^S	53601(p)
Local Agency Investment Fund (LAIF)	N/A	None	None	16429.1
Voluntary Investment Program Fund ^T	N/A	None	None	16340
Supranational Obligations ^U	5 years or less	30%	"AA" rating category or its equivalent or better	53601(q)
Public Bank Obligations	5 years	None	None	53601(r), 53635(c) and 57603

TABLE OF NOTES FOR FIGURE 1

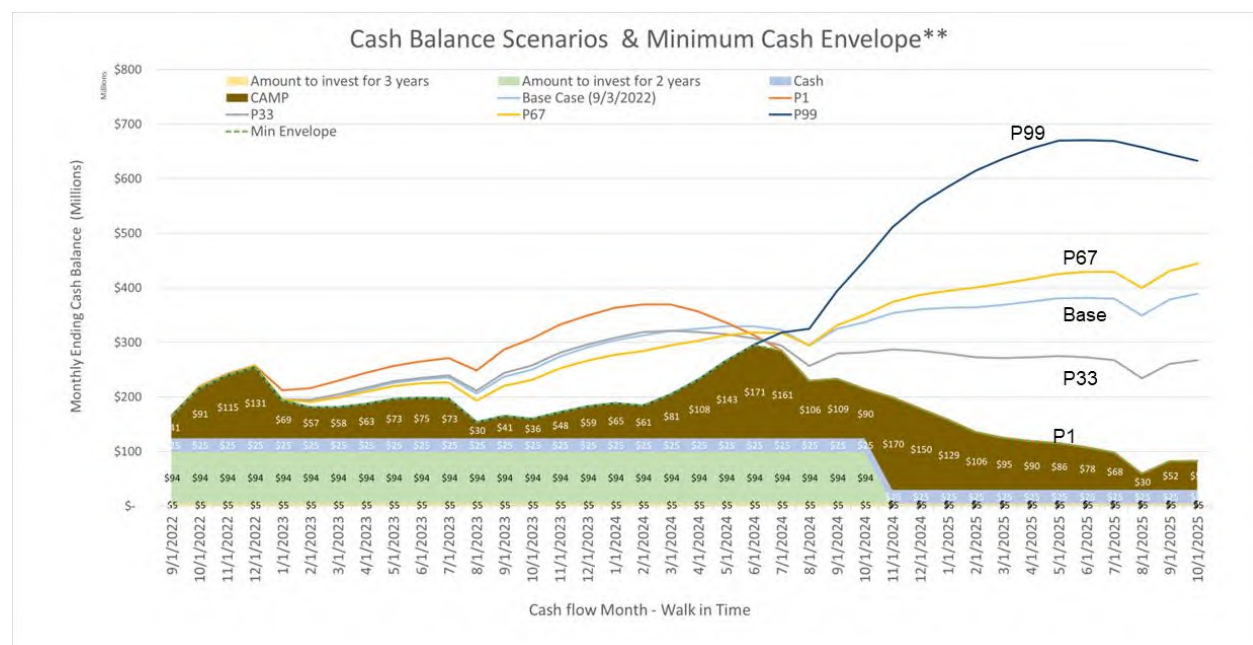
- ^A Sources: Sections 16340, 16429.1, 27133, 53601, 53601.6, 53601.8, 53630 et seq., 53635, 53635.8, and 57603.
- ^B Municipal Utilities Districts have the authority under the Public Utilities Code Section 12871 to invest in certain securities not addressed here.
- ^C Section 53601 provides that the maximum term of any investment authorized under this section, unless otherwise stated, is five years. However, the legislative body may grant express authority to make investments either specifically or as a part of an investment program approved by the legislative body that exceeds this five year remaining maturity limit. Such approval must be issued no less than three months prior to the purchase of any security exceeding the five-year maturity limit.
- ^D Percentages apply to all portfolio investments regardless of source of funds. For instance, cash from a reverse repurchase agreement would be subject to the restrictions.
- ^E No more than 30 percent of the agency's money may be in bankers' acceptances of any one commercial bank.
- ^F Includes agencies defined as a city, a district, or other local agency that do not pool money in deposits or investment with other local agencies, other than local agencies that have the same governing body.
- ^G Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper and medium-term notes of any single issuer.
- ^H Issuing corporation must be organized and operating within the U.S., have assets in excess of \$500 million, and debt other than commercial paper must be in a rating category of "A" or its equivalent or higher by a nationally recognized statistical rating organization, or the issuing corporation must be organized within the U.S. as a special purpose corporation, trust, or LLC, have program wide credit enhancements, and have commercial paper that is rated "A-1" or higher, or the equivalent, by a nationally recognized statistical rating agency.
- ^I Includes agencies defined as a county, a city and county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. Local agencies that pool exclusively with other local agencies that have the same governing body must adhere to the limits set forth in Section 53601(h)(2)(C).
- ^J No more than 30 percent of the agency's money may be in negotiable certificates of deposit that are authorized under Section 53601(i).
- ^K Effective January 1, 2020, no more than 50 percent of the agency's money may be invested in deposits, including certificates of deposit, through a placement service as authorized under 53601.8 (excludes negotiable certificates of deposit authorized under Section 53601(i)). On January 1, 2026, the maximum percentage of the portfolio reverts back to 30 percent. Investments made pursuant to 53635.8 remain subject to a maximum of 30 percent of the portfolio.
- ^L Reverse repurchase agreements or securities lending agreements may exceed the 92-day term if the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity dates of the same security.
- ^M Reverse repurchase agreements must be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state chartered bank that has a significant relationship with the local agency. The local agency must have held the securities used for the agreements for at least 30 days.
- ^N "Medium-term notes" are defined in Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States."
- ^O No more than 10 percent invested in any one mutual fund. This limitation does not apply to money market mutual funds.
- ^P A mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Sections 53601 and 53635.
- ^Q A money market mutual fund must receive the highest ranking by not less than two nationally recognized statistical rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than five years' experience investing in money market instruments with assets under management in excess of \$500 million.
- ^R Investments in notes, bonds, or other obligations under Section 53601(n) require that collateral be placed into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, among other specific collateral requirements.
- ^S A joint powers authority pool must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years' experience investing in instruments authorized by Section 53601, subdivisions (a) to (o).
- ^T Local entities can deposit between \$200 million and \$10 billion into the Voluntary Investment Program Fund, upon approval by their governing bodies. Deposits in the fund will be invested in the Pooled Money Investment Account.
- ^U Only those obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), and Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less.

Attachment 4 – Cashflow Analysis

The table below describes the label used for each scenario in the graph below that illustrates the results of the cash flow analysis:

Scenario	Description
Base	The expected scenario using the current forward energy market prices.
P1	Energy prices starting Jan 1, 2023 and going forward, <u>dropping</u> to the one percentile level. This scenario models a significant revenue drop far exceeding the corresponding energy procurement cost decrease.
P33	Energy prices starting Jan 1, 2023 and going forward, <u>dropping</u> to the 33rd percentile level. This scenario models a moderate revenue drop exceeding the corresponding energy procurement cost reduction.
P67	Energy prices starting Jan 1, 2023 and going forward, <u>increasing</u> to the 67th percentile level. This scenario models a moderate increase in energy procurement costs with further increases in CAISO collateral calls.
P99	Energy prices starting Jan 1, 2023 and going forward, <u>increasing</u> to the 99th percentile level. This scenario models a significant increase in energy procurement costs with further increases in CAISO collateral calls.

All scenarios layer in a summer heat event like that experienced recently that drives liquidity needs by an additional ~\$30 million.



The graph shows each scenario's cash balance over the modeled time horizon (Sept 2022 to October 2025). The dash-green line, labeled “Min Envelope,” shows the minimum cash balance under all the scenarios over time. This line further indicates that the lowest cash balance occurs in August 2025, when we would only have \$60 million. As a result, after holding \$25 million for normal operations and an additional \$30 million in overnight investments, \$5 million is available to invest with a maturity term of 3 years. In other words, under the worst cash balance position of all scenarios, if we do not want to sell securities for operational cash needs at any point in time, then invest at most \$5 million with securities that mature in 3 years and \$94 million with securities that mature in 2 years.

Using the same methodology described above for the “Min Envelope” case, the table below shows the amount available to invest under all the modeled scenarios for 3-year investment maturities and then any additional amount available for 2-year investment maturities.

Scenario	3-year Investment Maturity (\$million)	2-year Investment Maturity (\$million)
Base	\$110	\$0
P1	\$5	\$106
P33	\$111	\$0
P67	\$111	\$0
P99	\$99	\$0

Staff does not recommend using the most extreme scenario but instead recommends the P33 scenario or \$111 million (rounded to \$110 million) with an investment maturity term of zero to three years. If the extreme scenario occurs, SVCE will still have access to all the funds invested. The consequence would be selling the securities at a time not desired from an investment management perspective where the agency could incur mark-to-mark loss (loss of some principal). As staff gains more operational experience from the new cash management approach, staff will continue to refine the methodology and the models. As cash balances grow, staff will direct more funds toward the investment portfolio; however, staff will continue to raise additional funds in an overnight investment vehicle, such as CAMP, for potentially large Provider-of-Last-Resort (POLR) posting requirements expected in early 2023. The Stress Test Analysis, discussed at the June Board Meeting, described the POLR posting requirements.

CUSTODY AGREEMENT

This custody agreement (the "Agreement") dated as of January 10, 2013, is between U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America, as Custodian (the "Custodian") and the CALIFORNIA ASSET MANAGEMENT TRUST (the "Trust" and the "Customer") organized under the laws of the State of California and each of the Participants or Investors in the Trust that has signed an Account Opening Addendum as provided herein. .

WITNESSETH:

WHEREAS, the Trust has been created pursuant to a Declaration of Trust dated as of December 15, 1989 (as amended from time to time, the "Declaration of Trust") in accordance with Section 6502 of Title I, Division 7, Chapter 5 of the Government Code of the State of California; and

WHEREAS, the Trust desires the Custodian to serve as custodian of the securities and cash comprising the assets ("Pool Property") of one or more separate series established under the Trust (individually a "Pool" and collectively, the "Pools"), and provide certain banking services as described herein, and the Custodian is willing to act in such capacity upon the terms and conditions herein set forth; and

WHEREAS, the Trust desires the Custodian to serve as custodian of the securities and cash comprising the assets of discrete portfolios ("Individual Portfolios") belonging to any California state department or agency, county, county board of education, county superintendent of schools, city, public corporation, public district or regional transportation commission that is a Participant or Investor, as those terms are defined in the Declaration of Trust ("Participant" herein) and provide certain banking services as described herein and the Custodian is willing to act in such capacity upon the terms and conditions herein set forth. Each Individual Portfolio Account opened shall be treated as a separate custody account as if each Account had a separately signed custody agreement identical in terms to the ones contained herein. For each Individual Portfolio Account opened, Customer and Custodian shall complete and sign an Account Opening Addendum, a copy of which is attached hereto as Exhibit A, and shall be made part of this Agreement; and

WHEREAS, the money of the Pools and Individual Portfolios to be deposited with the Custodian constitutes money of a local agency or agencies within the meaning of Title 5, Division 2, Part 1, Chapter 4, Article 2 of the Government Code of the State of California (the "Government Code");

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Appointment and Acceptance.

1.1 The Trust hereby appoints Custodian as its agent of the Pool Property and Individual Portfolios to provide custody and other services in connection with securities, cash and other property delivered from time to time to Custodian hereunder by, or at the direction of, the Trust and income, distributions and payments received by Custodian with respect thereto (collectively the "Assets"); and Custodian hereby agrees to act in such capacity, and perform such services, and hold the Assets in custody accounts established in the name of the Trust and Participants (each an "Account" and collectively the "Accounts"), upon the terms and conditions set forth below. Custodian warrants that it is authorized under the Governmental Code and other applicable law to act as custodian and otherwise provide services hereunder.

1.2 For purposes of this Agreement, all references contained herein to actions, directions and responsibilities (other than the obligations set forth in Sections 12 and 14) of the Trust shall include, apply to and be binding upon the Trust's agents, including any investment manager or advisor, appointed

and authorized by the Trust to direct Custodian or otherwise take actions on behalf of the Trust in connection with Custodian's services and responsibilities hereunder. The Trust shall provide written notice to Custodian of the identity of all such appointed agents and the scope of their authority to act hereunder. The Trust hereby warrants that PFM Asset Management LLC (the Investment Advisor") has been appointed investment manager with authority to direct Custodian on investments and cash management. This authority shall remain in force unless and until revoked by the Trust in writing to the Custodian.

2. Asset Delivery, Transfer, Custody and Safekeeping.

2.1 The Trust will from time to time deliver, or cause to be delivered, Assets to Custodian. Custodian shall receive and accept such Assets for the Account upon appropriate directions from the Trust. Custodian shall keep records of all transactions involving the Account and Assets belonging to each Account.

2.2 Upon receipt of Appropriate Instructions, (defined in Section 11.1) Custodian shall return Assets to the Trust or Participant, as appropriate, or deliver to such location or third party as Appropriate Instructions may indicate, provided that in connection therewith it is the sole responsibility of the Trust or Participant to provide any transfer documentation as may be required by the Depository (defined in Section 3.3 below) or third party recipient. Custodian shall have no power or authority to assign, hypothecate, pledge or otherwise dispose of any Assets, except as provided herein or pursuant to Appropriate Instructions.

2.3 Custodian shall furnish the Trust or respective Participants, as part of the services for which Custodian charges its basic fee hereunder, with monthly Account statements reflecting all Asset transactions in the respective Accounts during the reporting period and ending Asset holdings. If the Trust or a Participant wishes Custodian to report on Assets that are not in control of the Custodian, the Trust or Participant requesting such report shall execute the Custodian's CLIENT CONTROL ADDENDUM, which shall be provided to the Customer upon request.

2.4 Custodian shall forward to the Trust or Participant, or its designated agent identified in Section 17.4 (or as identified in a separate written designation by the Trust or Participant that is received by Custodian) all information it receives with respect to any of the Assets concerning redemption rights that are exercisable at the Trust or Participant's option, tender or exchange offers, all proxy material it receives with respect to securities included among the Assets and all other special matters or shareholder rights. This Section 2.4 is subject to the following exceptions:

2.4.1 Exception: If Custodian receives a class action litigation proof of claim in respect to any of the Assets, Custodian shall file such claim on behalf of the Trust or Participant.

2.4.2 Exception: Custodian will not forward so-called "mini-tenders" to the Trust or Participant or its designated agent, as applicable. Mini-tenders are tender offers for a small amount of the outstanding securities of a "target" company, generally with an offer price at or below market value. For equity issues, unless a tender offer is made for 5% or greater of the outstanding securities, and is subject to Securities and Exchange Commission ("SEC") review, the tender offer will not be forwarded by Custodian.

2.4.3 Exception: No tender offer will be forwarded by Custodian for a debt issue if:

2.4.3.1 It is not registered with the SEC;

2.4.3.2 It has a “first received, first buy” basis with no withdrawal privilege and includes a guarantee of delivery clause; and

2.4.3.3 The offer includes the statement that “the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes” or similar language.

2.5 Absent specific investment directions to the contrary from the Trust or a Participant, Custodian is hereby authorized and directed by them to hold all cash and all checks and drafts (when collected funds are received) in the applicable Pool’s demand deposit account (“DDA”). All disbursements made from the DDA at the Custodian are to be funded by transfers from the applicable Pool Property held by the Custodian in the applicable custody Account of the Pool to the DDA on the day of the disbursement. No disbursement shall be made by transfers from the Individual Portfolio custody accounts to the DDA.

2.6 If any of the Assets received and held by Custodian hereunder shall be plan assets (“Plan Assets”) with respect to any employee benefit plan (a “Plan”) as those terms are defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), the Custodian shall not be deemed to be, and shall not exercise any discretionary powers or control over such Plan Assets so as to be, a fiduciary with respect to the Plan. Furthermore, the applicable Participant shall notify Custodian in writing whenever any Assets do constitute Plan Assets and thereafter, all subcontracts, agreements or other arrangements between Custodian and any subsidiary or affiliate thereof for services or products paid for from any assets of the said Plan and utilized in the performance of Custodian’s duties hereunder shall be subject to the advance approval the applicable Participant.

3. Powers of Custodian. In the performance of its duties hereunder, Custodian shall have the following powers:

3.1 To register any of the Assets in the name of the Trust or Participant or in the Custodian’s name or in the name of a nominee of Custodian or in the name of the Custodian’s agent bank or to hold any of the Assets in unregistered form or in such form as will pass title by delivery, provided that such Assets shall at all times be recorded in Customer’s Account hereunder as belonging to the Trust or Participant. In consideration of Custodian’s registration of any securities or other property in the name of Custodian or its nominee or agent, the Trust or applicable Participant agrees to pay on demand to Custodian or to Custodian’s nominee or agent the amount of any loss or liability for stockholders’ assessments, or otherwise, claimed or asserted against Custodian or Custodian’s nominee or agent by reason of such registration.

3.2 To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any or all other instruments that may be necessary or appropriate to carry out the duties described and powers granted herein.

3.3 To maintain qualifying Assets in any registered clearing agency or in a Federal Reserve Bank (collectively a “Depository”) as Custodian may select and to permit such deposited Assets to be registered in the name of Custodian, Custodian’s agent or nominee or Depository, on the records of a Depository and to employ and use securities depositories, clearing agencies, clearance systems, sub-custodians or agents located outside the United States in connection with transactions involving foreign securities.

3.4 Upon receipt of Appropriate Instructions, to maintain Assets in an account with a third-party custodian designated by the Trust for purposes of settling tri-party repurchase agreements.

3.5 To employ agents and to delegate duties to them as it sees fit and to employ or consult with experts, advisors and legal counsel (who may be employed also by the Trust or a Participant) and to rely on information and advice received from such agents, experts, advisors, and legal counsel.

3.6 To perform any and all other ministerial acts deemed by Custodian necessary or appropriate to the proper discharge of its duties hereunder.

3.7 To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons, and to deposit the same, with or without interest, in the commercial or savings departments of the Custodian serving hereunder or of any other bank, trust company or other financial institution including those affiliated with the Custodian, notwithstanding Custodian's or other entity's receipt of "float" from such uninvested cash.

4. Purchases.

4.1 Upon the receipt of Appropriate Instructions from the Trust, Custodian shall purchase securities for the Trust or Participants on a contractual settlement basis. The Trust and each Participant hereby agrees that it shall not instruct Custodian to sell any Asset until such Asset has been fully paid for by Custodian. Nor shall Customer engage in a practice whereby the Trust or Participants relies on the proceeds from the sale of an Asset to pay for the earlier purchase of the same Asset.

4.2 Notification by Agreement. Unless the Trust or a Participant and Custodian have entered into a separate written agreement that expressly makes Custodian either an investment manager or a discretionary trustee, the Account statements described above (including their timing and form) will serve as the sole written notification to the Trust and the Participants of any securities transaction effected by Custodian for the Account. Even so, the Trust and Participants have the right to demand that the Custodian provide written notification of such transactions pursuant to 12 CFR Sections 12.4(a) or (b) at no additional cost to Customer.

5. Sales.

5.1 Upon receipt of Appropriate Instructions from the Trust, Custodian will deliver Assets held by it as Custodian hereunder and sold by or for the Trust or a Participant against payment to Custodian of the amount specified in such Appropriate Instructions in accordance with the then current securities industry practices and in form satisfactory to Custodian. The Trust and Participants acknowledge that the current securities industry practice is delivery of physical securities against later payment on delivery date. Custodian agrees to use its best efforts to obtain payment therefore during the same business day, but the Trust and each Participant confirms its respective sole assumption of all risks of payment for such deliveries. Custodian may accept checks, whether certified or not, in payment for securities delivered on Customer's direction, and the Trust or the respective Participant assumes sole responsibility for the risks of collectability of such checks.

6. Settlements.

6.1 Custodian shall provide the Trust and Participants with settlement of all purchases and sales of Assets in accordance with Custodian's then prevailing settlement policies provided that:

6.1.1 Appropriate Instructions for purchases and sales are received by Custodian in accordance with Custodian's then current published instruction deadline schedule;

6.1.2 Custodian has all other information necessary to complete the transaction.

6.1.3 To avoid a deficiency in the Accounts, the Trust and each Participant agree that they shall not initiate any trade without sufficient Assets to settle such trade, nor shall they notify a separate financial institution that they intend to settle purchases out of the Account without sufficient Assets to do so.

6.2 Custodian shall not be liable or responsible for or on account of any act or omission of any broker or other agent designated by the Trust to purchase or sell securities for the Account of the Trust or a Participant. Custodian shall not be responsible for loss occasioned by the acts, neglects, defaults or insolvency of any broker, bank, trust company or other person with whom Custodian may deal in the absence of bad faith on the part of Custodian.

7. Corporate Actions.

7.1 In connection with any mandatory conversion of Asset securities pursuant to their terms, reorganization, recapitalization, redemption in kind, consolidation or other exchange transaction that does not require or permit approval by the owner of the affected Assets, Custodian will tender or exchange securities held for other securities, for other securities and cash, or for cash alone.

8. Collections.

8.1 Custodian shall collect all income, principal and other distributions due and payable on Assets held either by Custodian or a Depository and credit it to the appropriate Account of the Trust or a Participant but shall be under no obligation or duty to take action to effect collection of any amount if the Assets upon which such payment is due are in default, or if payment is refused after due demand and presentation. Custodian shall have no responsibility to notify the Trust or Participant, as appropriate, in the event of such default or refusal to pay, but if Custodian receives notice of default or refusal to pay from an issuer or transfer agent, Custodian shall so advise the Trust or Participant as appropriate.

8.2 Collections of monies in foreign currency, to the extent possible, are to be converted into United States dollars at customary rates through customary banking channels, including Custodian's own banking facilities, and in accordance with Custodian's prevailing policies for foreign funds repatriation. All risk and expense incident to such foreign collection and conversion is the responsibility of the Account and Custodian shall have no responsibility for fluctuations in exchange rates affecting such collections or conversion.

9. No Discretionary Authority; Standard of Care.

9.1 The Custodian shall care for the Assets in its custody as if, and to the same standard as it would its own property. The Trust and Participants and Custodian acknowledge that, except to the extent set forth in any separate instrument signed by the parties with respect to this Agreement, Custodian is not a fiduciary with respect to any Asset and the duties of Custodian hereunder do not include discretionary authority, control or responsibility with respect to the management or disposition of any Asset; or authority or responsibility to render investment advice with respect to any Asset. In addition, it is agreed that:

9.1.1 Custodian shall have no duty to make any evaluation or to advise anyone of the suitability or propriety of action or proposed action of the Trust or a Participants in any particular transaction involving an Asset or the suitability or propriety of retaining any particular investment as an Asset. Custodian shall have no duty or authority to review, question, approve or make inquiries as to any investment instructions given pursuant hereto. Custodian shall be under no duty or obligation to review the securities or other property held in the Account with respect to prudence or diversification.

- 9.1.2 Custodian shall not be liable for any loss or diminution of Assets by reason of investment experience or for its actions taken in reliance upon a direction or other instruction from the Trust or its agent.
- 9.1.3 Custodian shall have no duty or responsibility to monitor or otherwise investigate the actions or omissions of the Trust or Participants.
- 9.1.4 Custodian shall have no responsibility for the accuracy of Asset valuations quoted by outside services or sources in cases involving assets under the control of the Trust or Participants.
- 9.1.5 Custodian shall only be responsible for the performance of such duties as are expressly set forth herein or in Appropriate Instructions received by Custodian from the Trust or its agent which are not contrary to the provisions of this Agreement. Custodian shall exercise reasonable care in the performance of its services hereunder. In no event shall Custodian be liable for indirect, special or consequential damages.
- 9.1.6 Custodian shall not be liable for a failure to take an action required under this Agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not and including existing wars), revolutions, insurrection, riot, civil commotion, acts of God, accident, fire explosion, stoppage of labor, strikes or other differences with employees, laws regulations, orders or other acts of any governmental authority or any other cause beyond its reasonable control; nor shall any such failure or delay give Customer the right to terminate this Agreement, except as provided in Section 15 of this Agreement.

10. Books, Records and Accounts.

10.1 Custodian will make and maintain proper books of account and complete records of all Assets and transactions in the Account maintained by Custodian hereunder on behalf of the Trust and Participants. Custodian will preserve for the periods prescribed by applicable federal statute or regulation all records required to be maintained.

10.2 On reasonable notice, which shall in no event be less than forty eight (48) hours notice, Custodian will make available to and permit inspection during Custodian's regular business hours by the Trust or a Participant and its auditors of all books, records and accounts relating to the Trust or such Participant and retained by Custodian (or, to the extent practicable, its agents) in connection with its duties hereunder on behalf of the Trust or such Participant.

11. Instructions and Directions.

11.1 Custodian shall be deemed to have received appropriate instructions ("Appropriate Instructions") upon receipt of written instructions:

- 11.1.1 Given by any person whose name is listed on the most recent certificate delivered by the Trust and the Investment Advisor to Custodian which lists those persons authorized to give orders, and instructions in the name of and on behalf of the Trust and Participants or
- 11.1.2 Given by any other person duly authorized by the Trust for the Pool Property or by a Participant in respect to its individual Account or Accounts to give

instructions or directions to Custodian hereunder or who Custodian reasonably believes to be so authorized (such as an investment adviser or other agent designated by the Trust, for example).

11.2 Appropriate Instructions shall include instructions sent to Custodian or its agent by letter, memorandum, telegram, cable, facsimile, internet e-mail or similar means of written communication. The parties to this Agreement assume full responsibility for the security of electronically transmitted communications they send.

11.3 Any communication addressed and mailed shall be deemed to be given when received; and any communication sent by electronic transmission shall be deemed to be given when receipt of such transmission is acknowledged; and any communication delivered in person shall be deemed to be given when actually received by an authorized officer of Custodian or the Trust.

11.4 In the event that Custodian is directed to deliver Assets to any party other than the Trust or a Participant or its respective agent, Appropriate Instructions shall include and the Trust or Participant shall supply, customary transfer documentation as required by such party, and to the extent that such documentation has not been supplied, Custodian shall not be deemed to have received Appropriate Instructions.

12. Compensation, Security.

12.1 The Trust and Participants, in the case of Individual Portfolios, shall pay to Custodian fees for its services under this Agreement and shall reimburse Custodian for costs incurred by it hereunder as set forth in Schedule B or such other fee arrangement as Custodian and the Trust may otherwise agree in writing. Custodian agrees that it will not raise the fees for a period of three years from the effective date of this agreement. Invoices shall be sent either to the Trust or to the appropriate Participant in the case of an Individual Portfolio. If any such invoice is not paid within sixty (60) days, the Custodian may pay itself the amount of such invoice from the appropriate Account. Custodian shall give the Investment Advisor at least 10 days notice of such action.

12.2 If any advance of funds is made by Custodian on behalf of the Trust or a Participant to purchase, or to make payment on or against delivery of securities or there shall arise for whatever reason an overdraft in the Trust or Participant's Account, or if the Trust or Participant is for any other reason indebted to Custodian, including, but not limited to, any advance of immediately available funds (i) with respect to payments to be received by Custodian in next-day funds for the Pool (which Customer acknowledges Customer is liable to repay if Custodian does not receive final payment), the Trust agrees to repay Custodian on demand the amount of the advance, overdraft or other indebtedness and accrued interest at a rate per annum (based on a 360-day year for the actual number of days involved) equal to the Federal Funds effective rate in effect from time to time; and (ii) with respect to payments to be received by Custodian in next-day funds for an Individual Portfolio (which Participant acknowledges it is liable to repay if Custodian does not receive final payment), the Participant agrees to repay Custodian on demand the amount of the advance, overdraft or other indebtedness and accrued interest thereon at a rate per annum (based on a 360 day year for the actual number of days involved) equal to the Federal Funds effective rate in effect from time to time.

12.3 In the event of an advance of funds by Custodian, or if any overdraft is created by Account transactions, or if the Trust or a Participant is otherwise in default of any obligation to Custodian, Custodian may directly charge the applicable Account and receive such payment therefrom.

12.4 In the event that a compensation payment due Custodian is past due by more than 30 days, such amount may also be charged to the applicable Account and Custodian may receive such payment therefrom

12.5 [Intentionally omitted.]

12.6 None of the provisions of this Agreement shall require Custodian to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, if Custodian shall have reasonable grounds for believing that repayment of such funds, or indemnity satisfactory to Custodian against such risk or liability is not assured.

13. Customer Responsibility.

13.1 The Trust and each Participant shall be responsible for the review of all reports, accountings and other statements applicable to its Accounts provided thereto by the Custodian, and shall within 90 days following receipt thereof notify the Custodian of any mistakes, defects or irregularities contained or identified therein, after which time all such matters shall be presumed to be ratified, approved and correct and shall not provide any basis for claim or liability against the Custodian.

14. Indemnification.

14.1 The Trust and each Participant hereby agrees to fully and promptly indemnify Custodian and its affiliates, officers, directors, employees and agents (each a "Custodian Indemnified Party") and hold each Custodian Indemnified Party harmless from and against any cost, losses, claims, liabilities, fines, penalties, damages and expenses (including reasonable attorneys' and other professionals' fees) (collectively, a "Claim") arising out of:

- 14.1.1 The Trust or Participant's actions or omissions with respect to its respective Accounts or
- 14.1.2 Custodian's action taken or omitted hereunder with respect to its respective Accounts in reliance upon the Trust or Participant's directions or instructions, or upon any information, order, indenture, stock certificate, power of attorney, assignment, affidavit or other instrument delivered hereunder to Custodian in respect to such Accounts, reasonably believed by Custodian to be genuine or bearing the signature of a person or persons authorized by the Trust to sign, countersign or execute the same;
- 14.1.3 However the Trust and each Participant shall not indemnify a Custodian Indemnified Party for any Claim arising from the Custodian Indemnified Party's judicially determined willful misfeasance, bad faith or gross negligence in the performance of its duties under this Agreement in respect to its respective Accounts.
- 14.1.4 It is expressly understood and agreed by the parties hereto that the indemnity obligations herein are several as to the Trust and each Participant with respect to its respective Accounts, and the Trust shall have no indemnity obligation with respect to Individual Portfolios, and each Participant shall have no individual indemnity obligation with respect to the Trust Pool.

14.2 Custodian hereby agrees to indemnify the Trust and Participants and their respective controlling person, officers, directors, employee and agents ("Customer Indemnified Parties") and hold each of them harmless from and against any and all Claims arising out of:

- 14.2.1 Custodian's breach of this Agreement, willful misfeasance, bad faith or gross negligence in the performance of its duties under this Agreement, or
- 14.2.2 Any loss of Assets, including theft or destruction thereof but expressly excluding investment losses or other diminution of Assets resulting from the Custodian's proper performance of its duties hereunder.

14.3 Custodian shall not indemnify a Customer Indemnified Party for any Claim arising from the Trust or Participant Indemnified Party's breach of this Agreement, willful misfeasance, bad faith or gross negligence with respect to its duties and responsibilities under this Agreement.

14.4 This Section 14 shall survive the termination of this Agreement.

15. Termination.

15.1 This Agreement will remain in effect for three years from the effective date, with up to two one year renewals at the option of the Customer. Notwithstanding the foregoing, this agreement may be terminated by either party on not less than 60 days written notice to the other party, provided however that Custodian will continue to serve and this Agreement will not be terminated until such time as a successor custodian has been appointed and the Assets' custody and records have been transferred to the successor custodian .

15.2 Following notice of termination of this Agreement, Custodian shall follow such reasonable Trust instructions concerning the transfer of Assets' custody and records, provided:

15.2.1 Custodian shall have no liability for shipping and insurance costs associated therewith;

15.2.2 [Intentionally omitted];

15.2.3 Prior to termination, Custodian shall have been reimbursed for any advances of monies or securities made hereunder to the Trust or any Participant. If any Assets remain in an Account, the Trust and Participants acknowledge and agree that Custodian may designate the Trust or applicable Participant as successor Custodian hereunder and deliver the same directly to the Trust or applicable Participant.

15.3 Upon termination of this Agreement, all indemnification provisions herein shall survive with respect to any Claims arising from events prior to such termination.

16. Binding Obligations.

16.1 The Trust and Participants and Custodian each hereby represent that this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with the terms hereof; subject, as to enforcement of remedies, to applicable bankruptcy and insolvency laws, and to general principles of equity.

17. General Provisions.

17.1. Tax Responsibility. Unless indicated below in this section or required by law, Custodian shall not undertake any federal, state, or local tax reporting in connection with Assets, the Account or transactions therein, notwithstanding any other terms or conditions contained herein

In addition to those required by law, the Custodian shall perform the following additional services: NA (*if no additional services are to be performed, leave blank or mark NA*)

17.2. Tax Lot Methods. For the purpose of complying with Internal Revenue Service regulations requiring cost basis reporting, please select the tax lot selection method you wish for your Account. *We recommend that you consult with your tax advisor if you are unsure of the option that is best for you.*

- ☐ **Minimize Gain** - Shares are sold from tax lots having the highest per unit federal tax cost with a holding period of more than one year.
- ☐ **First In First Out (FIFO)** – Shares are sold from tax lots having the earliest federal tax acquisition date.
- ☐ **Last In First Out (LIFO)** – Shares are sold from tax lots having the most recent federal tax acquisition date.
- ☐ **Highest Federal Cost First Out (HIFO)** – Shares are sold from tax lots having the highest federal tax cost per share.
- ☐ **Lowest Federal Cost First Out (LOFO)** – Shares are sold from tax lots having the lowest federal tax cost per share.
- ☒ **Specify Tax Lot** – Shares are sold from tax lots that you specify.
- ☐ **Average Federal Tax Cost** - Shares are sold across all tax lots using the average cost. If your Account(s) holds investments for which this method is not permitted, the First-In First-Out default method will be used, unless you direct otherwise.
- ☐ **Maximize Gain** - Shares are sold from tax lots having the lowest per unit federal tax cost.

If you do not specify a particular tax lot or method, the First-In First-Out method will be used. If you wish to use a tax lot selection method that is different from what you selected above, on an individual investment or transaction basis, you may make that selection when you execute your trade.

17.3 Shareholder Communications Act Authorization. The Shareholder Communications Act of 1985, as amended, requires Custodian to make an effort to permit direct communications between a company that issues securities and the shareholder that exercises shareholder rights with respect to those securities. Unless the Trust or a Participant specifically directs Custodian in writing not to release its name, address and security position to requesting companies, Custodian is required by law to disclose the Trust or Participant's name and address to such companies. Therefore the Trust and Participants hereby responds to the following question [no response will mean "yes"]. Does the Trust and Participants authorize Custodian to provide its name, address and security position to requesting companies whose stock is owned in this Account? ____ Yes / X No

17.4 Customer's Agent – Shareholder Rights. Should the Trust or any Participant require that a designated agent for the Account, such as an investment advisor, be responsible for proxy voting and other special matters and shareholder rights as specified in Section 2.4, above, the Trust or such Participant shall provide the name and address of that agent below. Such agent shall be removed upon Custodian's receipt of a written removal from the Trust or Participant. The Trust or Participant may designate more than one agent to be responsible for separate sub-Accounts or investment Accounts under this Agreement by providing a clear, written designation to that effect to Custodian. Custodian hereunder has no authority or responsibility with regard to proxy voting or any similar special matters. Therefore, it may not be designated below unless it has separately agreed in writing to act as investment advisor for the Account.

Designated Agent: _____
Address: _____
Telephone Number: _____

17.5 Notice. Except as provided in Section 11 above, any notice or other communication under this Agreement shall be in writing and shall be considered given when delivered by certified mail, return receipt requested, to the parties at the addresses set forth on the execution page hereof (or at such other address as a party may specify by notice to other). Notice shall be effective upon receipt if by mail, or on the date of personal delivery (by private messenger, courier service or otherwise) or facsimile, whichever occurs first, to the addressed indicated below. The below addresses and individuals may be

changed at any time by an instrument in writing executed by the party giving same and given to the other party, in accordance with the procedure set forth above.

17.6 Complete Agreement; Modification. This Agreement contains a complete statement of all the arrangements between the parties with respect to its subject matter, supersedes all existing agreements between them concerning the subject, and cannot be amended or modified in any manner except by a written agreement executed by both parties. Notwithstanding the foregoing, if at any time Custodian is holding assets or property of the Trust or a Participant pursuant to any other custodial, pledge or other agency agreement with Customer (or which Customer has acknowledged in instructions to Custodian) and one or more third parties that involves Custodian's duties or obligations to a third party (which may be affiliates to Custodian) with respect to Assets, the terms and requirements of the other agreements concerning such Assets shall supersede and control the provisions and duties set forth herein.

17.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed in California.

17.8 Assignment. No party may assign any of its rights hereunder without the consent of the other, which consent shall not be unreasonably withheld. The foregoing consent requirement does not apply if either party shall merge or consolidate with or sell substantially all of its assets to another corporation, provided that such other corporation shall assume without qualification or limitation all obligations of that party hereunder either by operation of law or by contract.

17.9 Separability. If any provision of this Agreement is invalid or unenforceable, the balance of the Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

17.10 No Third Party Rights. In performing its services hereunder, Custodian is acting solely on behalf of the Trust. No agency, contractual or service relationship shall be deemed to be established hereby between Custodian and any other persons.

17.11 Counterparts and Duplicates. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument. This Agreement and any administrative form under the Agreement may be proved either by a signed original or by a reproduced copy thereof (including, not by way of limitation, a microfiche copy or an electronic file copy).

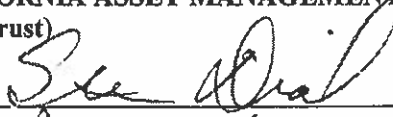
17.12 Legal Actions Affecting Account. If Custodian is served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant or similar order relating to the Account, (a "Legal Action") Custodian will comply with that Legal Action and shall be held harmless therefrom. the Trust or applicable Participant will reimburse Custodian for any fees or expenses Custodian incurs in responding to any Legal Action affecting the Account (including but not limited to attorneys' fees and other professionals' fees).

17.13 Abandoned Property. Any Assets remaining unclaimed or abandoned by the Trust or a Participant shall be delivered to the proper public official pursuant to applicable state's abandoned property, escheat or similar law and Custodian shall be held harmless therefrom. This Section 17.14 shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative effective as of the date first written above.

CALIFORNIA ASSET MANAGEMENT TRUST
(The Trust)

U.S. BANK NATIONAL ASSOCIATION,
as Custodian

By: 

By: _____

Title: PRESIDENT

Title: _____

Date: 1/11/13

Date: _____

Address: 50 CALIFORNIA ST #23
SAN FRANCISCO, CA 94111

Address: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative effective as of the date first written above.

CALIFORNIA ASSET MANAGEMENT TRUST
(The Trust)

U.S. BANK NATIONAL ASSOCIATION,
as Custodian

By: _____

Title: _____

Date: _____

Address: _____

By: John M. Olson

Title: Vice President

Date: February 2013

Address: 60 Livingston Ave
St Paul MN 55107

Exhibit A

Account Opening Addendum

Effective: 7-Feb-13 Revised 6/26/13

Silicon Valley Clean Energy

19-CA****

Date
TBD

U.S. Bank National Association

PFM Asset Management
as Program Administrator of
The California Asset Management Program

Notice of Designation of Authorized Persons

To: Richard J. Ertel
Secretary
PFM Asset Management LLC

Pursuant to the Unanimous Written Consent of the Managers of PFM Asset Management LLC dated December 7, 2021, I hereby designate the following individuals as authorized persons to open accounts in the name of the Company, acting pursuant to an investment advisory agreement, with registered securities broker dealers and banks and to direct transactions for the purchase or sale of securities and transfer of funds in such accounts in accordance with agreements governing such accounts.

Kenneth Schiebel
Robert Cheddar
Joseph Creason
Jeffrey Rowe
Kerri Muskin
Brian Raubenstine
Giancarlo Morales-Belletti
Meredith LaBuda Sullivan
Greta Foust
Michael Downs
James Sims
Laura Creason
Ryan Petrasic
Mitul Patel
Kylie Bueti
John Zhang


Robert Cheddar

Joseph Creason

Jeffrey Rowe

Kerri Muskin

Brian Raubenstine

Giancarlo Morales-Belletti

Meredith LaBuda Sullivan

Greta Foust

Michael Downs

James Sims

Laura Creason

Ryan Petrasic

Mitul Patel

Kylie Bueti

John Zhang

Dated: July 20, 2022
These are the only persons so designated.


By: 
Kenneth Schiebel
Chief Investment Officer

EXHIBIT B
U.S. Bank Custody Fee Schedule
California Asset Management Program

Cash Reserve Portfolio:

Annual Administrative Fee	\$7200
Market Value Based Fee	0.333 basis points (annual rate)
Transactions:	
FED/DTC buys/sells faxed	\$10 per
FED/DTC buys/sells electronic	\$6 per
Interest Payments	No charge
Maturities/Calls	\$10 per
Repos	\$6 per

Individually Managed Portfolios:

Annual Administrative Fee	\$200
Market Value Based Fee	0.333 basis points (annual rate)
Transactions:	
FED/DTC buys/sells faxed	\$10 per
FED/DTC buys/sells electronic	\$6 per
Interest Payments	No charge
Maturities/Calls	\$10 per
Repos	\$6 per
Cash Transfers	\$2.50 per

Fees to be invoiced monthly.

CALIFORNIA ASSET MANAGEMENT TRUST
FIRST AMENDMENT TO CUSTODY AGREEMENT

This Amendment to Custody Agreement (the "Amendment") is made and entered into as of 15th day of March, 2018 and is effective as of January 10, 2018 by and between the California Asset Management Trust (the "Trust" and the "Customer") and US Bank National Association ("the Custodian").

WITNESSETH THAT

WHEREAS, the Trust and the Custodian entered into a Custody Agreement ("the Agreement") dated as of January 10th 2013, whereby the Custodian is providing custody services as described therein; and

WHEREAS, the Trust and the Custodian wish to amend the Agreement to extend the termination date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the intent of being legally bound, the parties hereby agree as follows:

The first sentence of Section 15.1 of the Custody Agreement is hereby deleted and shall be replaced by the following:

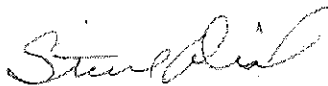
"This Agreement shall commence on the Effective Date and shall terminate on February 5, 2021 unless otherwise terminated pursuant to this section, [already in Custody Agreement].

This Amendment may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Amendment has been executed by the Trust and the Custodian and is effective as of the date written above.

CALIFORNIA ASSET MANAGEMENT TRUST

By: _



Name: Steven Dial

President

US BANK NATIONAL ASSOCIATION

By:  VP

THIRD AMENDMENT TO CUSTODY AGREEMENT

THIS THIRD AMENDMENT TO CUSTODY AGREEMENT effective as of January 1, 2021 (the “Third Amendment”) is by and between U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America, as Custodian (the “Custodian”) and the CALIFORNIA ASSET MANAGEMENT TRUST (the “Trust”), a trust organized under the laws of the State of California.

WHEREAS, the Custodian and the Trust entered into a Custody Agreement dated as of January 10, 2013 (the “Original Agreement”) whereby the parties agreed that the Custodian would serve as custodian of the securities and cash comprising (i) the assets of one or more separate series established under the the Trust, and provide certain banking services as described in the Original Agreement, and (ii) the assets of discrete portfolios belonging to any California state department or agency, county, county board of education, county superintendent of schools, city, public corporation, public district or regional transportation commission that is a Participant or Investor, as those terms are defined in the Declaration of Trust and provide certain banking services as described in the Original Agreement; and

WHEREAS, the Original Agreement provided for an initial term of three years, with two one-year renewals at the option of the Trust, both of which options have been exercised; and

WHEREAS, pursuant to a First Amendment to Custody Agreement dated as of August 2013 (the “First Amendment”), the Trust and the Custodian amended the Original Agreement to change the selection of tax lot method relating to sales of securities held in custody by the Custodian, in order to (i) facilitate the reporting by PFM Asset Management LLC, as the Trust’s investment advisor, of trade information for such securities and (ii) achieve cost savings; and

WHEREAS, pursuant to an amendment misdesignated as a First Amendment to Custody Agreement dated as of March 2018 (the “Second Amendment,” and with the Original Agreement and the First Amendment, the “Existing Agreement”), the Trust and the Custodian extended the term of the Existing Agreement through February 5, 2021; and

WHEREAS, the Custodian and the Trust desire to amend the Existing Agreement (i) to revise the Custodian’s fee schedule, (ii) to extend the term of the Existing Agreement by three years, and (iii) to provide after such three-year extension for the ability of the Trust to exercise options for two additional three-year renewals, subject to the ability of the Custodian to further adjust its fee schedule for such renewal periods; and

WHEREAS, the Existing Agreement, as amended by this Third Amendment, is referred to as the “Agreement;” and

WHEREAS, capitalized terms used herein but not defined herein shall the meanings ascribed to such terms in the Original Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, PFM and Bank agree as follows:

1. **Extension of Term.** This Agreement is hereby extended for an additional three (3) years (the “Second Extension Term”), which Second Extension Term shall commence on February 6, 2021 and terminate on February 5, 2024. Thereafter, the Trust may extend the term of the Agreement for

two additional three-year periods ("Additional Terms"), subject to the ability of the Custodian to adjust the Fee Schedule during such Additional Terms as provided in Section 2 hereof.

2. Replacement of Fee Schedule.

Effective January 1, 2021, the Fee Schedule attached as to the Original Agreement as Exhibit B is hereby replaced by the Fee Schedule attached hereto as Exhibit B (Amended). The Fee Schedule attached hereto shall remain in effect through the Second Extension Term or earlier termination of this Agreement. Thereafter, assuming the Trust has exercised its right to extend the Agreement for the two Additional Terms, the Custodian may revise the Fee Schedule on the effective date of any subsequent Additional Term, provided that written notice of any proposed changes to the Fee Schedule must be provided to the Trust at least 90 days in advance of the effective date of such subsequent Additional Term. Changes to the Fee Schedule during any such subsequent Additional Terms of the Agreement are subject to negotiation and approval by the Trust in writing and may not exceed the unadjusted percent change in the Consumer Price Index for All Urban Consumers (CPI-U) for the most recently available 36-month period which precedes the expiration date of the then current Additional Term, provided that the Trust shall be under no obligation to extend the term at the end of any Additional Term even if the proposed Fee Schedule adjustment is within the agreed upon limit.

3. Confirmation of Existing Agreement. Except as amended and supplemented hereby, the Existing Agreement is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed by their duly authorized representative effective as of the date first written above.

**CALIFORNIA ASSET MANAGEMENT TRUST
(The Trust)**

By: 

Title: President

Date: 11/17/2020

Address:
50 California Ste 2300
San Francisco, CA. 94111

**U.S. BANK NATIONAL ASSOCIATION,
as Custodian**

By: Kate O'Connor

Title: Vice President

Date: 11/17/20

Address:
800 Nicollet Mall
Minneapolis, MN 55402



Staff Report – Item 1j

Item 1j: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Tina Walia, Executive Committee Chair

Date: 6/14/2023

The Executive Committee met May 26, 2023 and heard from staff on workforce development, SVCE's 2024 Strategic Plan, framework for the SVCE FY 2023-24 budget, and information on SVCE's FutureFit Homes program.

Bena Chang, Senior Government Affairs Manager, presented an update on SVCE's Workforce Development strategy which included how workforce fit into SVCE's mission, areas where SVCE has focused on workforce development, and what partnerships SVCE may want to continue building. The next steps identified included refining the workforce development strategy and bringing ideas back to the Board.

CEO Girish Balachandran presented an update on the development of SVCE's 2024 Strategic Plan, which included a discussion about the proposed FY 24 Strategic Focus Areas. Committee members provided their feedback on staff's initial draft of the focus areas, which staff will refine and bring back to the Board.

Amrit Singh, CFO and Director of Administrative Services, presented SVCE's FY 2023-24 Budget framework. CFO Singh's presentation included revenue modeling, reserve targets, customer discount rate, power supply costs and other cost drivers including the possibility of purchasing a building. The Committee provided feedback on the assumptions of the budget, and initial thoughts on purchasing rather than leasing a building. Staff will incorporate feedback into the development of the budget, which will be brought back to the Executive Committee for further discussion and to the Board of Directors for approval in September.

Jessamyn Allen, Senior Programs Specialist, provided a presentation with an overview of SVCE's FutureFit Homes program, which helps support whole-home electrification by addressing key financial and technical barriers and provides services to support incentive layering and development of electrification roadmaps.

Materials from this meeting can be found on SVCE's website: [SVCE Executive Committee Meeting, May 26, 2023](#)

The next meeting of the Executive Committee is scheduled for June 23, 2023 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 1k

Item 1k: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Hung Wei, Finance and Administration Committee Chair

Date: 6/14/2023

The Finance and Administration Committee met May 15, 2023 and discussed the results of the stress test analyses for the FY2024-2028 planning horizon, framework for the FY 2023-24 budget, and format changes to SVCE's Treasurer Report.

Amrit Singh, SVCE's CFO and Director of Administrative Services, presented findings of the stress test analyses. Presentation highlights included a recap of the Energy Risk Management framework, construction of the stress test scenarios, an overview of the modeled price collapse, results and implied reserve targets, and next steps. Committee members asked clarifying questions to understand the modeled risks.

CFO Singh presented the next item, which addressed SVCE's FY 2023-24 Budget Framework. Staff requested feedback on the principles and assumptions used, and CFO Singh noted the budget numbers would be computed in July based on feedback from the committee. Next steps identified were bringing the budget framework discussion to the Executive Committee, and to develop recommendations based on the feedback received with options for a draft budget to be presented to the Finance and Executive Committee in early August.

Lastly, CFO Singh and Aidas Baublys, Senior Financial Analyst, presented an informational item on updates to the monthly Treasurer Report. The Committee reviewed the proposed changes and provided feedback.

Materials from this meeting can be found at the following link: [SVCE Finance and Administration Committee Meeting, 5/12/23.](#)

The next Finance and Administration Committee meeting is scheduled for Tuesday, August 1, at 1:00 p.m. at the SVCE Office.

**Staff Report – Item 11**

Item 11: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 6/14/2023

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.

There is no report this month as the regularly scheduled meeting on May 17, 2023 was adjourned.

The next meeting of the board will be June 21, 2023 at 1:00 p.m.; meeting materials can be found on the CC Power website: <https://cacomunitypower.org/meetings/>

**Staff Report – Item 1m**

Item 1m: Additional Committee Reports

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 6/14/2023

There are no reports for the 1) Legislative Response to Industry Transition 2023 Ad Hoc Committee and 2) Audit Committee as they have not met since the last report.

The next meeting of the Legislative Response to Industry Transition 2023 Ad Hoc Committee is scheduled for June 21, 2023 at 3:00p.m.; the next meeting for the Audit Committee will be scheduled based on member availability.



Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 6/14/2023

REPORT

Staff Updates

Karen Chang joined SVCE on May 22, 2023 as Manager of Finance and Risk Controls. Karen's responsibilities in the finance area will include developing our financial forecasts and budgets, managing our accounting functions in coordination with our third-party accounting firm (including the annual audit), and managing our cash flows, investments, banking, and counterparty collaterals. In the risk controls area, Karen will help project manage the ongoing Energy Trading and Risk Management system implementation, part of phase one of the Business Process Optimization initiative. Karen will also enhance and further develop the middle office risk controls per our Energy Risk Management Policy and industry standards. Karen has a B.S. in Mechanical Engineering from UCLA and a Certificate in International Business & Marketing from UCLA Anderson School of Business.

Juliette Pascual began her new role as Community Outreach Specialist on the Energy Services & Community Relations team May 30, 2023. Juliette had been working with SVCE as a Climate Corp fellow since September 2022, working on outreach efforts such as local community events, education fund grants, and the EmpowerSV video scholarship competition. Prior to SVCE, Juliette worked in community engagement at an urban forestry nonprofit. She also was a Peace Corps Volunteer in the Philippines from 2019-2020. Juliette graduated from UC Berkeley with a B.S. in Conservation & Resource Studies and a minor in Creative Writing.

Personnel Officer Update

SVCE is increasing its retreat cadence and will be gathering again in late June to meet offsite on the 22nd and at the office on the 23rd for the Executive Committee Meeting. Since the May Board Meeting, SVCE has brought on board full-time one of our most recent Climate Corps fellows, and has had an offer accepted for the position of Energy Services Principal - with the candidate starting in late June. With the departure of one member of the 4PRO team, vacancies remain at four currently, and recruitment continues for those positions.

Summer Readiness Update for June 14, 2023 Board Meeting

The California Independent System Operator (CAISO) released their [2023 Summer Loads and Resources Assessment](#), which offers an outlook into available resources going into the season. Due to new resource build and a good hydro year, agencies are generally optimistic about this summer. It is expected there are sufficient contingencies to meet demand should such conditions as the 2022 heat wave were to occur. Using lessons learned from last summer's response, staff will take the following actions to help the state and the grid if conservation events are called.

- Proactively connecting with member agency facilities contacts and large commercial and industrial customers ahead of the summer Flex Alert season.
- Promoting the PG&E Power Saver Rewards Program and Emergency Load Reduction Programs offered through PG&E where customers can get paid to reduce load when an event is called.

Agenda Item: 2**Agenda Date: 6/14/2023**

- Continuing to enroll customers in the GridShift EV Charging app, which pays customers for load reduction during "critical GridShift hours.
- Exploring getting municipal resilience projects enrolled into a Distributed Energy Resources Management System to be able to respond to events this summer.

Staff will send out a digital toolkit in the coming weeks to the board and member agency staff to help share preparedness messaging with the community. Staff will also provide updates throughout the summer when Flex Alerts or other grid events are called.

City-level GHG Metrics Coming Soon

SVCE staff currently supports member agencies in preparing their communitywide greenhouse gas (GHG) emissions inventories each year. We plan to summarize and publish some high-level GHG numbers for each jurisdiction, across the building and transportation sectors. This information will include historical information and links to each jurisdiction's own, detailed GHG inventories if available. Staff intends to make this available on the SVCE website in the coming few months.

CEO Agreements Executed

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

- 1) Sunshine Strategies, Amendment: Communications support for existing Buildings Policies Development, extends date to 12/31/23
- 2) FreeWire Technologies, Inc., Incentive Program Agreement: Priority Zone DC Fast Charging Incentive Program Incentive Agreement, not to exceed \$100,000
- 3) Au Energy, Incentive Program Agreement: Priority Zone DC Fast Charging Incentive Program Incentive Agreement, not to exceed \$100,000
- 4) City of Morgan Hill, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$500,000, 12/31/24
- 5) City of Morgan Hill, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$95,748, 12/31/24
- 6) SEI, Agreement: Climate Corps Fellow Hosting Services, not to exceed \$216,000, 9/1/23 – 6/30/24, approved by the Board of Directors at the May 10, 2023 Board of Directors meeting
- 7) Power MC LLC, Agreement: Business Process Optimization, not to exceed \$97,290. 5/22/23 – 12/31/23
- 8) City of Cupertino, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$111,500
- 9) NP Energy, LLC, Amendment: Management and Policy Consulting, extends term to 12/31/24



CEO Power Supply Agreements Executed

Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value
STX Commodities	4/18/2023	Purchase	RPS PCC-3	1/1/2022	12/31/2022	\$286,000
MSCG	4/4/2023	Purchase	RPS PCC-1	4/4/2023	12/31/2023	\$1,350,000
SJCE	5/3/2023	Purchase	Resource Adequacy	7/1/2023	7/31/2023	\$65,000
MSCG	3/21/2023	Amendment	RPS PCC-1	1/1/2023	12/31/2023	\$66,710.76
PCE	4/26/2023	Purchase	Resource Adequacy	7/1/2023	7/31/2023	\$660,000
PCE	4/26/2023	Sale	Resource Adequacy	7/1/2023	7/31/2023	\$660,000
PCE	5/8/2023	Purchase	Resource Adequacy	7/1/2023	7/31/2023	\$260,000
Constellation	5/12/223	Purchase	Resource Adequacy	9/1/2023	9/30/2023	\$3,060,000
SDG&E	5/12/223	Purchase	Resource Adequacy	7/1/2023	9/30/2023	\$5,666,000
SDG&E	5/12/223	Purchase	Resource Adequacy	7/1/2023	9/30/2023	\$14,939,600
Direct Energy	5/10/2023	Purchase	Import Allocation Rights	8/1/2023	8/31/2023	\$25,500
MSCG	5/12/223	Purchase	Resource Adequacy & Carbon-Free Energy	8/1/2023	8/31/2023	\$1,840,000
PG&E	5/24/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$900,000

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
- CalCCA Annual Conference panelist, "CCAs Innovating for the Future", May 19, 2023

ATTACHMENTS

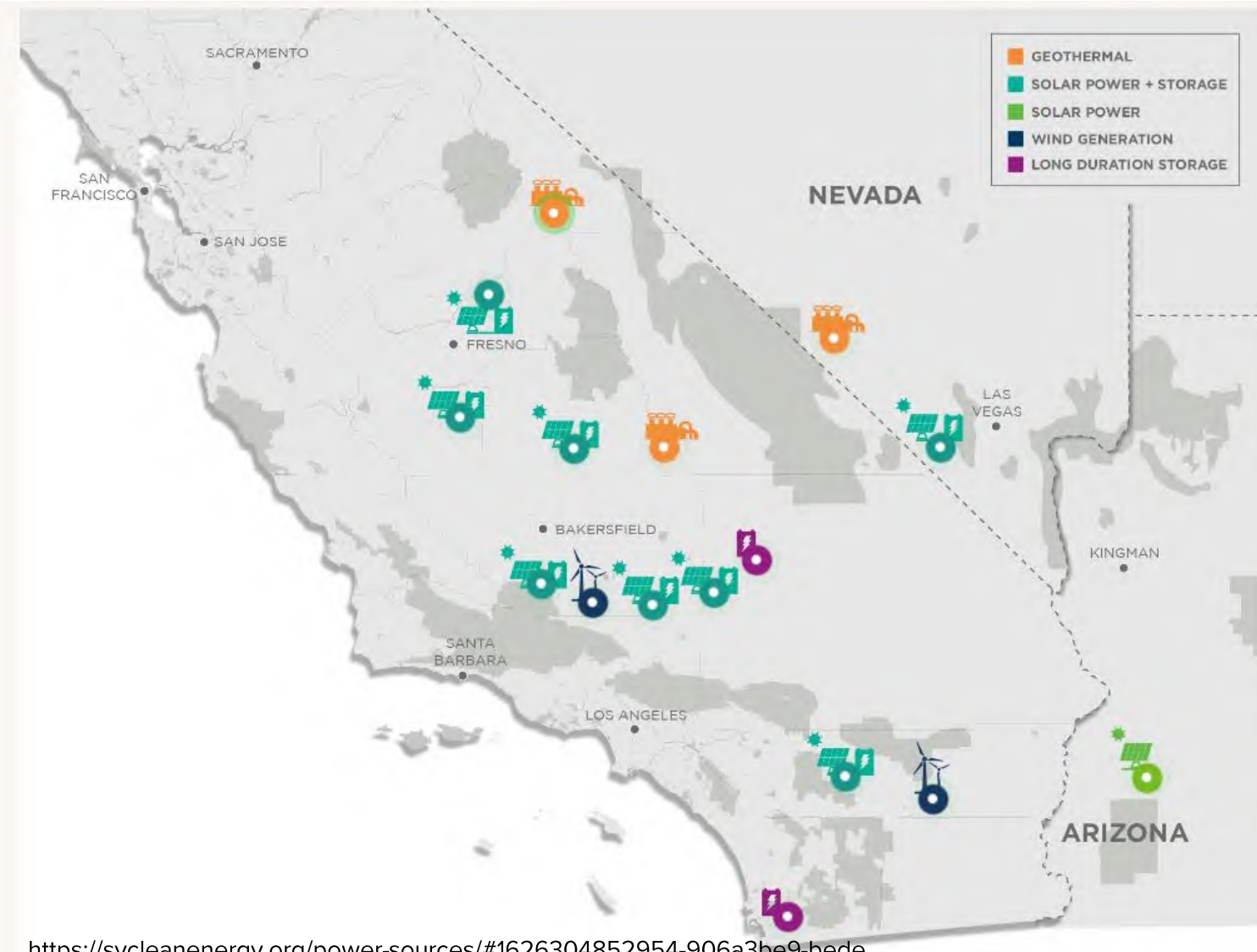
1. Clean Power Update, June 2023
2. Decarb Programs & Policy Update, June 2023
3. Energy Services & Community Relations Update, June 2023
4. Regulatory and Legislative Update, June 2023
5. Agenda Look Ahead, June – October 2023

CEO Report Clean Power Update

SVCE Board Meeting
June 14, 2023



Clean Long-term Power Agreements



- \$2B+ 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



SVCE Long-Term Clean Energy Contracts

Item 2
Attachment 1

	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	Jun-22	In-development



Clean Energy Resources On-line Progress as of 6/1/2023

2023 – Q2

- Angela Solar + Storage – **Pre-construction – delayed**
- Aratina Solar + Storage – **Pre-construction – delayed**

2023 – Q3

- Yellow Pine Solar + Storage – **Construction mode – Storage will be online soon; Solar expected in July 2023.**

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

Item 2
Attachment 1

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!



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 ● Multifamily Building Electrification Direct Install ● 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 ● Multifamily EV Charging Direct Install ● 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

JUNE HIGHLIGHTS



Enter the Go Electric Summer Kick Off Sweepstakes

Through the [Go Electric Summer Kick Off Sweepstakes](#), ten winners will have the opportunity to choose between a \$500 electric bill credit, a Caraway 12-piece cookware set paired with a portable induction cooktop, or a portable power station paired with a Google NEST Learning Thermostat.

Customers can enter to win by taking a deep dive into SVCE's online tools and resources to learn new ways to use your clean electricity and go electric at home and on the road. The more customers explore, the more chances they have to win. Sweepstakes end June 18, 2023.



Enter [the sweepstakes](#) for a chance to win!

New Electrification Incentives for Small to Medium Businesses

New SVCE rebates are now available to [Small-to-Medium Business](#) customers for electrifying space and water heating equipment! We're offering up to \$20,000 (and \$25,000 for nonprofits) for qualifying projects.

Learn more [here](#) about how to participate.



FutureFit Homes Expands Offerings to Low-Income Households

Starting in May, SVCE's FutureFit Homes Program expanded the higher rebates designed for low-income households to more customers. Previously, only customers enrolled in CARE or FERA rates were eligible. Now, customers meeting the low-income criteria for Santa Clara County can receive these rebates - up to \$13,000 in rebates per household. All FutureFit Homes rebates can be applied with other regional, state, and federal incentives.

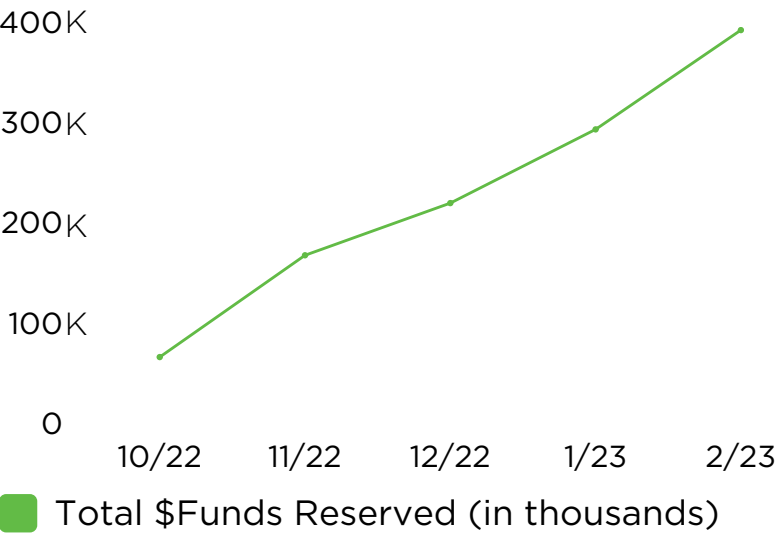
Rebates must be reserved via SVCE's website before upgrades are made.

Visit the [FutureFit Homes](#) page to learn how to apply.



Future Fit Homes

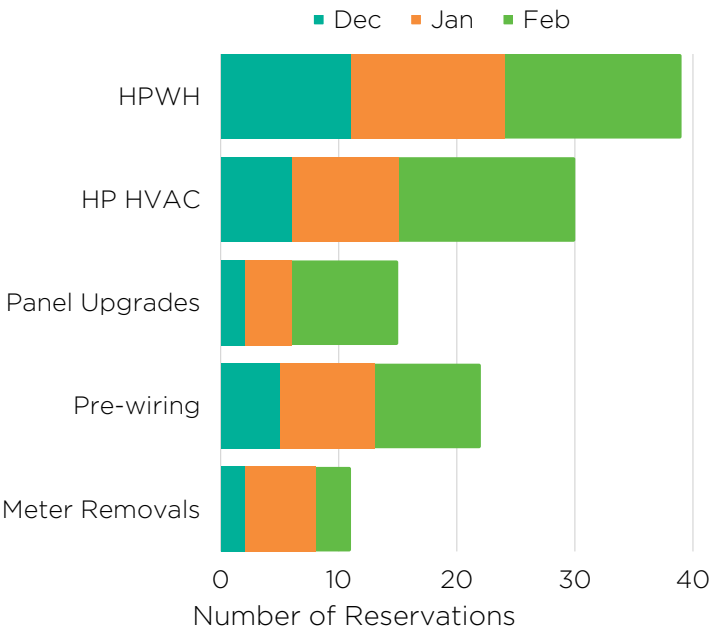
Provide incentives to residents for electric heat pump water heaters (HPWH), heat pump HVAC systems, service panel upgrades, and pre-wiring upgrades to replace gas appliances



Rebates claimed*: \$1.06M

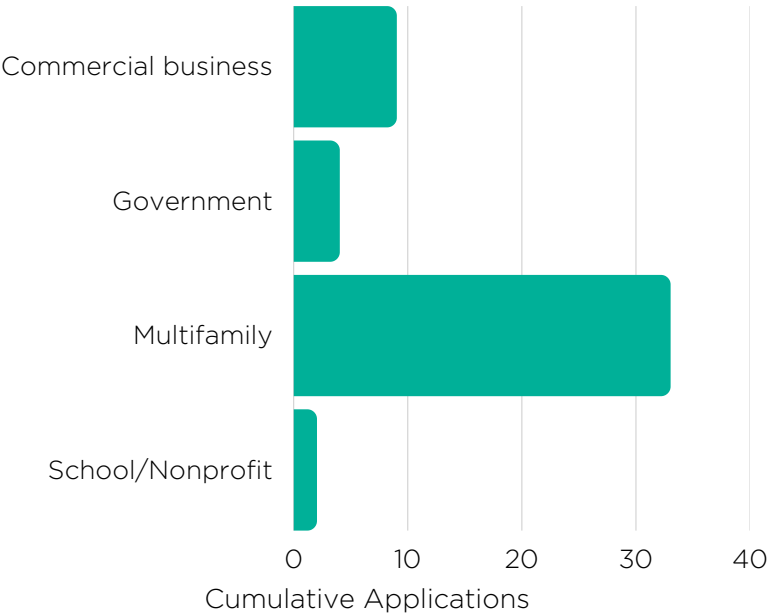
Rebates reserved: \$392.5K

*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.



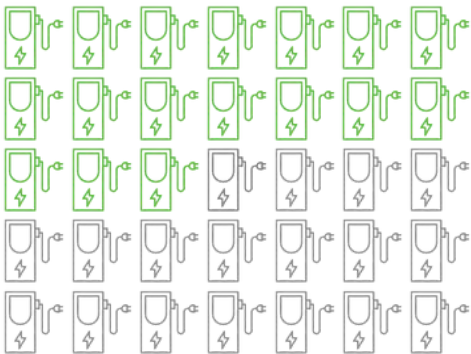
Charging Installation Incentive Program

Incentive program for L1 and L2 EV charging infrastructure at multifamily properties

Funds Reserved: \$707K

Approved Reservations: 17

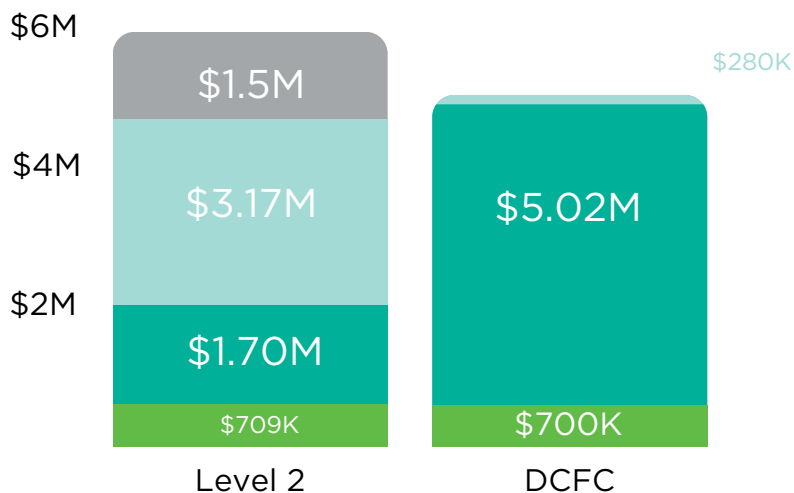
Goal: 35 Sites, 150 ports



ONGOING METRICS

CALeVIP

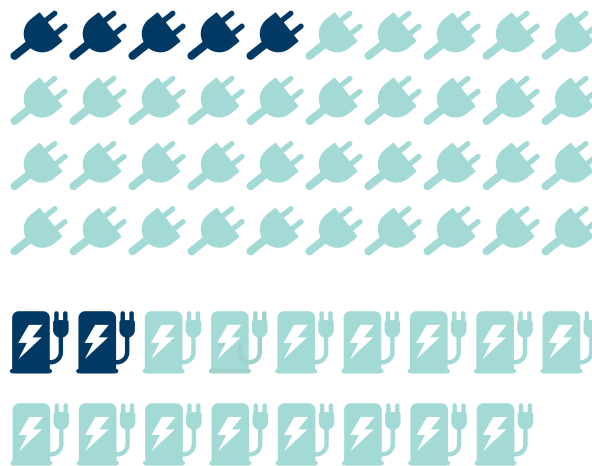
Provide incentives for electric vehicle (EV) chargers as part of a regional program



■ Reserved ■ Waitlisted (To be released in future years)
■ Funds Issued ■ Being Processed

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



■ Completions ■ Registrations

Funding: \$1.5M

Goal: 150 Participants Complete the Course (Phase 1)

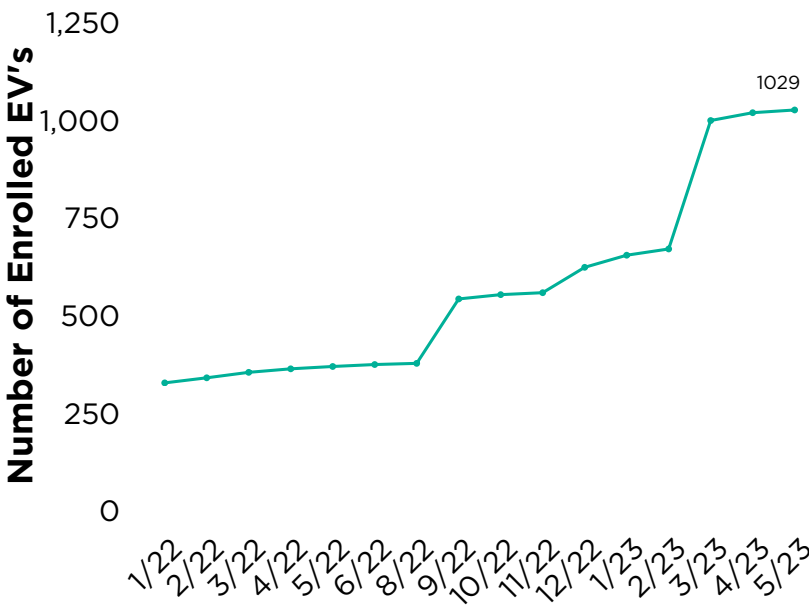


= 5 Participants Complete Course

ONGOING METRICS

GridShift EV Charging

Managed EV charging app that optimizes charging to reduce associated costs and emissions.



Charger Rebate Funds

Reserved: \$120k

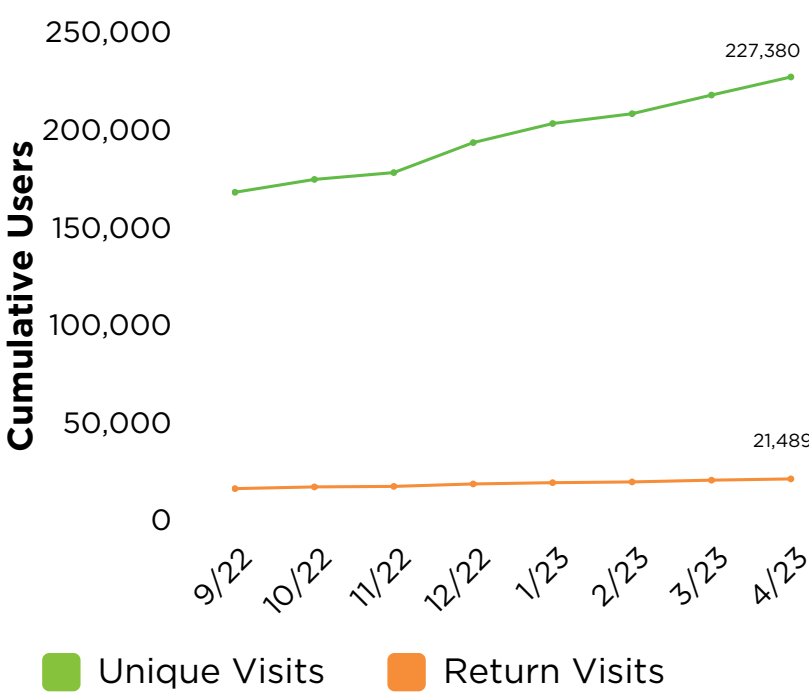
Charger Rebate goal: #120



Charger Rebates Reserved: 52

eHUB Report

Online customer resource center to enable engagement, education and action related to clean electricity, EVs and home electrification.



eHub visitor Goals:

Reach 275K Unique Visitors by EOY

Goal: Conduct 10 full-scale email campaigns



7 email campaigns completed

1. Outreach Events & Sponsorships

Date	Sponsorship	Location
6/3/2023	Destination Electric: A Los Altos EV Showcase Event 10:00 a.m. – 2 p.m. <i>Tabling</i>	Los Altos Community Center Parking Lot 97 Hillview Ave Los Altos, CA 94022
6/3-4/2023	Sunnyvale Arts & Wine Festival 10:00 a.m. - 6:00 p.m. <i>Sponsorship and tabling</i>	Downtown Sunnyvale South Murphy Avenue Sunnyvale, CA, 94086
6/8/2023	SVLG's 2023 Energy & Sustainability Summit 11:00 a.m. – 5:00 p.m. <i>Regional Sponsorship</i>	Oracle 100 Oracle Pkwy Redwood City, CA 94065
June 2023	Sunnyvale Music & Dining Nights Branding Sponsorship	Downtown Sunnyvale Murphy Avenue

2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.30%	96.34%
Commercial	96.73%	

3. Member Agency Working Group – May Update

The recent MAWG meeting was held in person on May 25, 2023, and was attended by 7 different agencies and organizations with a total of 18 participants.

The following agenda items were presented and discussed:

- Building Electrification Concierge Program
- Summer Readiness
- Reach Codes Next Steps
- Funding Opportunities
- New Program Now Live: Small & Medium Business Rebates

4. Go Electric Summer Kick Off Sweepstakes



- Launched May 18, and closes June 18
- Encourages customers to learn about electrification and visit eHub tools
- Participants are entered into a drawing to win prizes
- Ten winners will have the opportunity to choose between a \$500 electric bill credit, a Caraway 12-piece cookware set paired with a portable induction cooktop, or a portable power station paired with a Google NEST Learning Thermostat
- Over 48k entries received as of May 31, representing ~850 customers

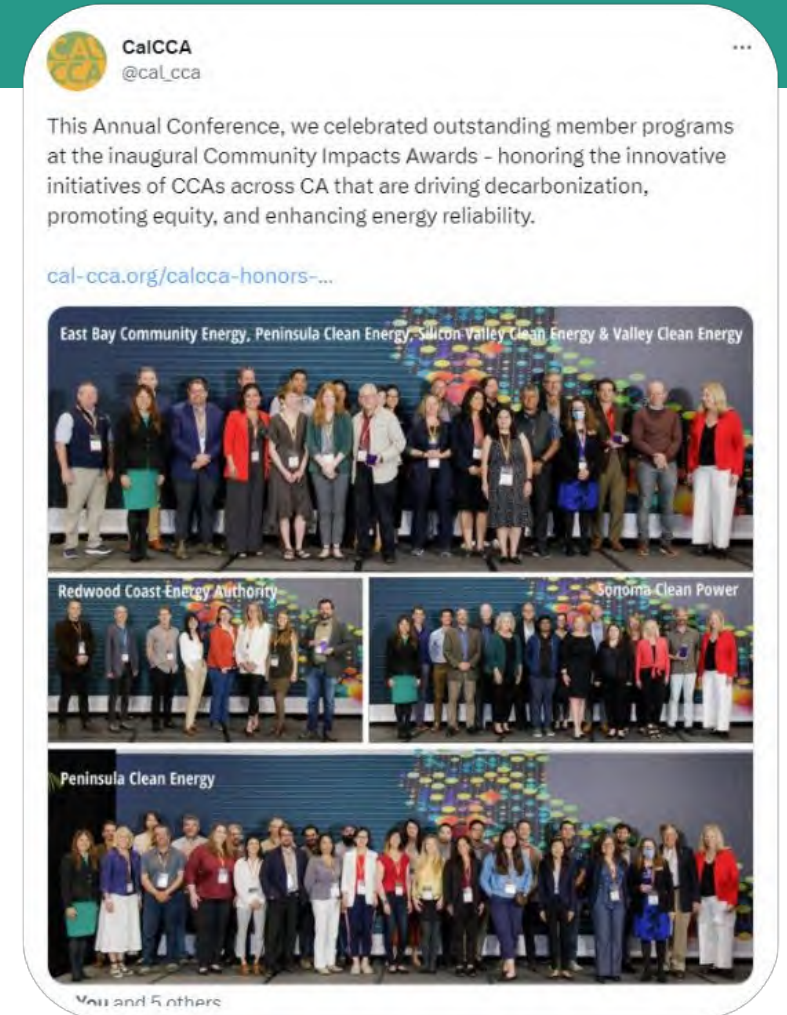
5. Press & Media

Press

- [Local Communities Receive \\$3.6 Million to Build Awareness on the Benefits of Upgrading to Clean, Modern Appliances](#), *Press Release*, 05-09-23

Media

- [The State of 24/7 Carbon-free Energy: Recent Progress and What to Watch](#), World Resources Institute, 05-05-23
- [Sunnyvale nonprofit awards \\$3.2 million in clean energy grants](#), The Mercury News & East Bay Times, 05-14-23
- [Community News](#), The Mercury News (Cupertino, Milpitas) & East Bay Times, 05-21-23
- [CalCCA honors innovative programs at community impact awards](#), Public CEO, 05-23-23



SVCE Legislative and Regulatory Update

June 14, 2023



Policy Updates

Regulatory Update:

1. Load Management Standards

Legislative Update:

1. Budget Trailer Bill/AB 1373 (Garcia)
2. Governor's May Revise Budget Proposal
3. SVCE Legislative Positions



Regulatory Update



Key Regulatory Proceedings

Proceeding	Purpose	Status
Distributed Energy Resource Program Cost-Effectiveness Issues, Data Access and Use, and Equipment Performance Standards (R. 22-11-013)	To achieve consistency of cost effectiveness assessments, improve data access and use, and consider equipment performance standards for distributed energy resource (DER) customer programs.	A scoping ruling for the DER Program Cost-Effectiveness and Data Access proceeding (DER Data Access) was recently issued. The proceeding has been scoped into 2 phases. Phase 1 will focus on issues related to the cost-effectiveness of customer DER programs and policies on improving data usage and access to help customers make informed decisions about adoption, evaluation, and utilization of DERs. Phase 2 will focus on developing equipment performance standards. A ruling requesting party comments on the formation, membership, and coordinator for data working groups is expected to be issued sometime this month. SVCE expects to participate in the data working groups to advocate for CCA data access improvements.



Legislative Update



Governor's Budget Trailer Bill/AB 1373

AB 1373 was amended in the Assembly recently – amendments are moving in the right direction.

Key Provisions

- 1) **Central Procurement:** Amended to significantly narrow central procurement to offshore wind and geothermal. Authority would sunset and only the Dept. of Water Resources is eligible to become the central procurement entity.
- 2) **Expanded CPUC Authority:** The broad expansion of CPUC's authority over CCAs was eliminated.
- 3) **Capacity Payments:** New language would reduce the double penalty between CPUC's Resource Adequacy penalty and a capacity payment.



Governor's May Revise Budget Proposal

Governor is projecting worsening budget compared to his January proposal.

- Deficit is projected to deepen another \$9.3 billion for \$31.5 billion total.
- Proposal does not cut further climate and energy programs than what was already proposed in January. Programs like ZEV, Equitable Building Decarbonization, and Long Duration Storage are getting haircuts.
- Governor is supporting a climate bond and wants to work with legislature to figure out details.
- Proposing to increase funding for CEC programs, primarily by tying an existing ratepayer surcharge to the Consumer Price Index.



Federal Update – Debt Ceiling Negotiations

Final Debt Ceiling bill spares IRA from cuts and contains modest permitting reform.

Highlights of the permitting reforms include:

- 2-year limit on conducting Environmental Impact Statements
- 1-year limit on environmental assessments under NEPA
- Requires designation of one lead federal agency to conduct review
- Reduces the number of alternatives for proposed project locations
- Allows federal agencies to share “categorical exemptions”



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	Died – two-year bill
SB 488 (Alvarado-Gil)	Allows CCAs to participate in the BioRAM program.	Competitive Equity	Support	Died – two-year bill
SB 410 (Becker)	Reporting, timelines, and stakeholder group for distribution-level interconnection.	Clean, Reliable Grid	Support	Assembly Energy Committee
SB 527 (Min)	Would require the CPUC to establish a Neighborhood Decarbonization Program.	Climate Mitigation/Fuel Switching	Support	Died – two-year bill
AB 593 (Haney)	Directs CEC to create a statewide building decarb strategy	Climate Mitigation/Fuel Switching	Support	Senate



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

June 2023	July 2023	August 2023	September 2023	October 2023
Board of Directors, June 14:	Board of Directors, Cancelled	Board of Directors, August 9: Consent: Minutes May 2023 Treasurer Report SVCE 2022 Annual Power Source Disclosure Report Attestation Water Heater Loaner Contract Committee Reports Regular Calendar: Budget Preview Closed Session: CEO Eval	Board of Directors, September 13: Consent: Minutes June 2023 Treasurer Report Committee Reports CEO Agreement Amendments Regular Calendar: Budget approval Update on Strategic Plan and Adopt Strategic Focus Areas	Board of Directors, October 11: Consent: Minutes July 2023 Treasurer Report Committee Reports Adopt FY23-24 Workplan Receive Q3 2023 Programs Update Regular Calendar: TBD
Executive Committee, June 23: Insurance Coverage Program Snapshot	Executive Committee, Cancelled	Executive Committee, August 25: TBD Program Snapshot	Executive Committee, September 22: TBD Program Snapshot	Executive Committee, October 27: TBD Program Snapshot
		Finance & Admin Committee, Aug 1, 3pm: Budget Preview		

**Staff Report – Item 3**

Item 3: SVCE Strategic Plan FY 24 Update

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 6/14/2023

As in previous years, staff is in the process of an annual review to update SVCE's Strategic Plan and Strategic Focus areas. At the May 26, 2023 meeting, the Executive Committee received a presentation with an introduction to the FY 24 Strategic Plan and provided feedback on the Focus Areas that have been incorporated into the presentation for the Board of Directors.

The remaining timeline for the 2024 Strategic Plan and Strategic Focus areas follows:

- June 14, 2023, Board of Directors Meeting: SVCE Strategic Plan FY 24 Update (Discussion)
- August 25, 2023, Executive Committee: Strategic Focus Areas Update (Discussion)
- September 13, 2023, Board of Directors Meeting: Update on Strategic Plan and Adopt FY24 SVCE Strategic Focus Areas (Action)
- October 11, 2023, Board of Directors Meeting: Adopt FY24 SVCE Strategic Work Plan (Action – Consent)

ATTACHMENT

The presentation for this item will be posted to the SVCE website.



Staff Report – Item 4

Item 4: Results of Stress Test Analyses for FY2024- FY2028 Planning Horizon

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services
Karthik Rajan, Senior Risk Manager

Date: 6/14/2023

RECOMMENDATION

Receive the results of the Stress Test analyses. This report provides background information that staff will use in developing recommendations for adjusting reserve levels for the next fiscal year (2023-2024) budget.

EXECUTIVE COMMITTEE AND FINANCE AND ADMINISTRATION COMMITTEE REVIEW

Staff presented the stress test analysis to the Executive Committee at its April 28, 2023, meeting. The Committee reviewed the analysis with the staff and provided feedback on the three-tier threshold, in the reserves policy, for assessing SVCE's financial liquidity. In SVCE's reserves policy, SVCE has a minimum threshold requirement of maintaining 120 days of cash on hand (DCOH), a target threshold of 285 DCOH, and a maximum of 490 DCOH. The policy requires replenishment of the reserves if they fall below the minimum threshold. The CEO must present options to the Board on the disposition of reserves should they exceed the maximum level. No action is required if the target threshold is reached. Since no action is needed once the target is reached, staff asked the Committee if the target should be removed. The Committee recommended keeping the target because it indicates the reserve levels in a three-tier level. The Committee noted that if reserves are below the target but above the minimum level, more precautions should be taken to build reserves. As explained later in the report, the target threshold is set at a level such that if the modeled stress scenario occurred, the reserve drawdown would not fall below the minimum of 120 DCOH.

Staff also presented the stress test analysis to the Finance and Administration Committee at its May 12, 2023, meeting. The Committee reviewed the results of the analyses and asked the staff clarifying questions to understand the modeled risks.

BACKGROUND

At the February 27th, 2023, Finance and Administration Committee meeting and the April 28th, 2023, Executive Committee meeting, staff presented the Enterprise Risk Management (ERM) framework¹ for comprehensively assessing and managing the organization's risks and opportunities. The ERM framework includes a risk register that records the organization's risks and opportunities and a risk matrix to assess their impact on the organization. Depending on the impact on SVCE's mission, staff devises an optimal action plan for each risk and opportunity listed on the risk register. Staff explained that stress test is an essential component of ERM because of the inherent weakness in standard market risk measures in assessing "black swan" or extreme but plausible events such as market disruptions caused by, for example, an economic recession. The stress test is constructed with the staff's assessment of the plausible combinations of risks listed on the risk register that can significantly impact SVCE's finances.

¹ Enterprise Risk Management framework, Item 4: <https://svcleanenergy.org/wp-content/uploads/2023-0227-Finance-and-Admin-Meeting-Agenda-Packet-scrubbed-compressed-1.pdf>

Agenda Item: 4**Agenda Date: 6/14/2023**

In constructing the stress test scenarios, staff leveraged lessons and insights from the 2022 analyses.

In 2022, SVCE team prioritized five stress test scenarios that, based on the staff's professional assessment, could have the most severe consequences for SVCE. Of the five scenarios, four were impacted by market price uncertainties, which included both increase and collapse of market power prices coupled with insufficient financial liquidity, load losses, and loss or delay of resources under Power Purchase Agreements.

The key finding from the 2022 stress test analyses is that the most significant financial risk facing SVCE is a collapse in energy prices. A collapse in energy prices will significantly reduce SVCE's revenues because of higher PCIA and lower PG&E generation rates. However, this price drop will not substantially reduce SVCE's energy purchase costs because the prices for most of the forward energy purchases are locked because of hedging over the next five years, with more hedges in the earlier years aligned with the Energy Risk Management Policy hedging targets. The hedges also include contracts for the fixed-price purchase of renewable energy. The price collapse impact overwhelms all other stress factors.

This year's analysis, described in the next section, also models a price collapse within an economic recession scenario.

ANALYSIS & DISCUSSION

The 2023 stress scenario includes these assumptions.

1) Energy price drop to statistical one percentile level

To provide customers with competitive rates, SVCE sets its generation rates such that customers receive an effective discount, currently set at four percent for 2023 and modeled at 1% after that, to comparable PG&E rates. Because CCA customers must pay PCIA charges, SVCE reduces its rate by the PCIA amount to provide the targeted discount rate. As a result, if PCIA increases and PG&E generation rate decreases, SVCE generation rates decline.

Market prices for energy are at an all-time high level. The stress test scenario assumes that market prices beginning in April 2023 and for all forward months in the five-year study period drop to the one percentile level. This result is approximately a 44% drop in prices. In comparison, during the financial crisis, commodity prices (using natural gas as a proxy) dropped by about 70% within a short period.

2) Economic recession and resulting price drops lead to insufficient financial liquidity

The standard credit risk management practice, except for long-term Power Purchase Agreements (PPAs), is the requirement to post collateral, usually, cash or letters of credit, when the exposure to the counterparty reaches the negotiated credit limit. A price collapse would increase our counterparty's credit risk or exposure to SVCE, and per the contract, when the credit limit is reached, SVCE must post the required collateral. The price collapse does not significantly impact liquidity because of SVCE's active management of collateral posting requirements, including placing key counterparties in a lockbox mechanism in return for not having posting requirements and long-term PPAs not being subject to this requirement.

The most significant impact comes from regulatory uncertainty under potential changes to the Financial Security Requirement (FSR). Each CCA must post an FSR amount to their incumbent investor-owned utilities (IOU), PG&E for SVCE, that the utility can draw upon should the CCA fail and return its customers to the IOU. The IOUs are currently the provider of last resort (POLR). The current FSR methodology is primarily based on the difference between the IOU's retail rates and the forecast of serving the CCA load over a 6-month period, where the FSR is adjusted every six months. Under current regulatory proceedings, certain proposals from the IOUs could increase the posting requirement for SVCE to two months of the energy cost of serving the customers. Under current market conditions, this requirement could be as high as \$80 million. Because under the stress case

Agenda Item: 4**Agenda Date: 6/14/2023**

assumption, the price collapse would reduce the cost of serving the customers, the FSR is modeled at \$40 million.

In 2023, SVCE has made significant strides in an investment strategy to get better returns on the cash balance. The stress test also assessed potential losses should SVCE have to liquidate the investment portfolio to respond to the modeled scenario. The interest rate would likely fall in an economic recession, resulting in better value for the SVCE portfolio. Also, given that the holding period of these investments is less than three years, the impact of potential losses is muted. SVCE can always hold the investments to maturity and potentially avoid liquidation losses during the holding period.

3) Increased bad debt and load loss due to a recession.

Economic recession often entails contraction of load and an increase in bad debt losses. The analysis assumes a 5% load loss for 20 months of the forecast. The 5% estimate is derived from the average load loss experienced during Covid. The bad debt assumption is ~1% of the revenues.

The attachments to this report provide the summary tables with financial results under the current base case scenario and the modeled stress case scenario. The base case shows a significant reserve growth from the forecast fiscal Year (FY) 2023 level of \$219 million to \$390 million at the end of FY 2024 and continued strong growth in margins over the next five years². If the modeled stress scenario were to occur, reserves would be drawdown by about \$185 million. The resulting days cash on hand (DCOH) at the end of FY 2025 would drop to only 41 days, and by FY 2026, SVCE would run out of cash.

The modeled results are based on the assumptions that the current high forward prices and other modeled assumptions, especially those around PCIA and PG&E generation rates, would prevail. PCIA and PG&E generation portfolio assumptions are based on public data as best modeled by the California Community Choice Association (CalCCA) consultant NewGen Strategies and are highly uncertain. In addition to not knowing the contents of the PCIA portfolio and PG&E's generation portfolio, PG&E's portfolio management strategy may change from those modeled, and the California Public Utilities Commission (CPUC) may moderate future PG&E generation rate increases. All these uncertainties make the absolute value of the results highly unreliable. Nevertheless, the relative differences between the base case and the modeled stress test scenario are highly pertinent to understanding our strategic risks. The focus of the analyses is on the delta of results between the base case and the stress test scenario.

Like last year, the stress test analysis, updated for market prices in alignment with those used to develop the next fiscal year's budget, will be used to update the reserve monitoring and reporting thresholds. The proposed methodology for updating the reserves thresholds is to build reserves such that if the modeled stress scenario were to occur, reserves do not fall below the minimum reserve threshold of holding 120 Days of Cash on Hand (DCOH) over the next two fiscal years and 90 DCOH over the remaining five fiscal years.

The table below summarizes what the update would look like if we were to do so at the modeled prices:

	Current	Illustrative New Targets
Minimum	120	120
Goal (Target)	285	270
Maximum (Upper Target)	490	390

STRATEGIC PLAN

The analyses support SVCE Strategic Plan Goal 15 – “Commit to maintaining a strong financial position” and

² SVCE's cash balance as of Feb 28th, 2023, was about \$210 million, and the corresponding days cash on hand was 194 at the time of this analysis. SVCE's cash balance as of Mar 31st, 2023, was about \$223 million, and the corresponding days cash on hand was 206.

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Goal 16 – “Avoid failures in the management of market risk, credit risk, liquidity risk, operational risks, and enterprise risks.”

FISCAL IMPACT

The stress test analyses show that the key financial risk facing SVCE is a collapse in energy prices that can significantly reduce revenues and require a substantial draw of funds from the reserves. The best mitigation of this risk is to hold sufficient funds in reserves. Staff will use the results of these analyses to recommend reserve levels for the Board to consider in setting the Fiscal Year 2023-24 budget.

ATTACHMENT

1. Summary of Base Case Results & Stress Test Results

Agenda Item: 4**Agenda Date: 6/14/2023****Attachment 1 – Summary of Base Case Results****Base Case**

Fiscal Year (BY)

	2023	2024	2025	2026	2027	2028
Revenues	\$ 251	\$ 573	\$ 574	\$ 525	\$ 498	\$ 471
Power Supply Cost	\$ 212	\$ 364	\$ 377	\$ 387	\$ 379	\$ 372
Operating Margin	\$ 39	\$ 210	\$ 196	\$ 138	\$ 119	\$ 98
Other Costs	\$ 29	\$ 39	\$ 32	\$ 32	\$ 32	\$ 33
Net Contribution to Reserves	\$ 10	\$ 170	\$ 164	\$ 106	\$ 86	\$ 66
Reserve Balance	\$ 219	\$ 390	\$ 554	\$ 660	\$ 746	\$ 812
Days Cash on Hand		353	494	575	662	732

Stress Case

P1

	BY 2023	2024	2025	2026	2027	2028
Revenues	\$ 242	\$ 333	\$ 228	\$ 289	\$ 294	\$ 280
Power Supply Cost	\$ 198	\$ 322	\$ 313	\$ 308	\$ 306	\$ 303
Operating Margin	\$ 44	\$ 11	\$ (85)	\$ (19)	\$ (12)	\$ (23)
Other Costs	\$ 29	\$ 39	\$ 32	\$ 32	\$ 32	\$ 33
Net Contribution to Reserves	\$ 15	\$ (29)	\$ (117)	\$ (51)	\$ (45)	\$ (55)
Reserve Balance	\$ 224	\$ 196	\$ 79	\$ 27	\$ (18)	\$ (73)
Reserve Balance after POLR Adjustment	\$ 224	\$ 156	\$ 39	\$ (13)	\$ (58)	\$ (113)
Days Cash on Hand		157	41	(14)	(62)	(123)

**Staff Report – Item 5**

Item 5: FY 2023-24 Budget Framework

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 6/14/2023

This item will be addressed in the form of a presentation to the Board of Directors regarding the preliminary framework for the FY 2023-24 operating budget.

ATTACHMENT

The presentation for this item is posted to SVCE's website.

Silicon Valley Clean Energy Board of Directors Meeting

June 14, 2023

Appendix A

Power Resource Contracts Executed by CEO



General Agreement on sale and purchase of Certificates

This General Agreement on sale and purchase of Certificates (including its Annex) governs all transactions the Parties shall enter into relating to the purchase, sale, delivery and acceptance of Certificates, each such transaction being an **"Individual Contract"**. All Individual Contracts and this General Agreement shall form a single agreement between the Parties (collectively referred to as the **"Agreement"**). The provisions of this General Agreement constitute an integral part of each Individual Contract. In the event of any inconsistency between the General Agreement and any Individual Contract, the Individual Contract shall prevail.

1. **Date of Agreement** April 18, 2023 (the **"Effective Date"**)
2. **Reference Number**
 Party A 13995
 Party B N/A
3. **Party A** **STX Commodities, LLC**, a limited liability company organized under the laws of the State of Delaware, United States, having its office address at Eleven Times Square, 31st floor New York, NY 10036, United States, e-mail: backoffice.nyc@stxgroup.com.
4. **Party B** **Silicon Valley Clean Energy Authority**, a company organized under the laws of California, having its office address at 333 W El Camino Real #330, Sunnyvale California, 94087.

Party A and Party B hereafter jointly referred to as the **"Parties"** or individually as **"Party"** as the case may be.

5. **Certificates** To be confirmed in the Confirmation of Individual Contract, see Annex 1.
6. **Production Domain** To be confirmed in the Confirmation of Individual Contract, see Annex 1.
7. **Quantity** To be confirmed in the Confirmation of Individual Contract, see Annex 1.
8. **Price** To be confirmed in the Confirmation of Individual Contract, see Annex 1.
9. **Taxes**

The Seller will be responsible for any Taxes imposed on the transfer of each Certificate up to and including the time and place of its delivery. The Buyer will be responsible for any Taxes imposed on the receipt or ownership of each Certificate at or after time and place of its delivery. **"Taxes"** shall mean all national, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, premium, property, customs, duties or other taxes, fees (except as otherwise set forth in clause 10 below), assessments or charges of any kind imposed by any international, national, federal, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any applicable laws, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

10. Transaction costs

The Seller and the Buyer will each bear their individual fees and expenses incurred in connection with the negotiations, preparation and execution of the Agreement and the transactions contemplated by the Agreement.

11. Conditions

N/A

12. Confirmation, Delivery, Invoicing and Payment

12.1. Confirmation

Notwithstanding any other provision of the Agreement to the contrary, a transaction may be entered into only by a written document executed by both Parties containing substantially the information stipulated in Annex 1 – Individual Contract (each an **"Individual Contract"** or a **"Confirmation"**). No Confirmation, or amendment or modification to a Confirmation shall be enforceable except through a written document executed by both Parties.

STX**12.2. Delivery Date**

As set forth in the applicable Confirmation.

12.3. Delivery

Transfer of ownership by electronic transfer or cancellation statement to be confirmed in the As set forth in the applicable Confirmation.

12.4. Electronic Transfer

No later than on the Delivery Date, the Seller shall initiate the transfer of the agreed Quantity of Certificates by requesting the removal of the Quantity of Certificates from the Seller's registry account as listed in Annex 1 ("**Seller's Account**") and the crediting of such Certificates to the Buyer's registry account as listed in Annex 1 ("**Buyer's Account**"). Transfer of ownership and risk in the Certificates shall pass from the Seller to the Buyer when the Certificates are credited to the Buyer's registry account.

12.5. Cancellation Statement. Reserved**12.6. Payment Date**

As set forth in the applicable Confirmation.

12.7. Invoicing

The Seller will invoice the Buyer for payment of the Total Contract Price, which is the agreed price per Certificate multiplied by the Quantity of Certificates transferred to Buyer for each Confirmation.

12.8. Payment

The Buyer shall pay the Total Contract Price on the Payment Date to the Seller's bank account free of any Taxes. Payment shall be remitted by bank transfer. Such payment shall be made in United States dollars, unless agreed otherwise. Each Party shall specify its bank details in clauses 3 and 4 of Annex 1 for the purposes of payment.

12.9. Default Interest Rate

As from the Payment Date the Seller shall be entitled to charge default interest at a rate of 2% above the one-month SOFR interest rate. SOFR means the secured overnight financing rate administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate). Interest may be charged from, and including, the Payment Date and to, and excluding, the date of complete payment.

12.10. Payment netting

If on any day the Parties are each required to pay one or more amounts in the same currency under one or more Individual Contracts then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their respective payment obligations through netting, in which case the Party owing the greater aggregate amount shall pay the other Party the difference of the amounts owed. The Parties intend for this Agreement to be a "master netting agreement" under United States Bankruptcy Code §101(38A) (as such provision may be amended from time to time).

13. Warranties**13.1. Each Party warrants and represents to the other Party as of the Date of Agreement and as of the date of each Individual Contract that:**

- a) It is duly organized and existing under the laws of the jurisdiction of its organization and has full power and legal right to execute, deliver and perform under this Agreement.
- b) Its execution, delivery and performance of this Agreement does not constitute a violation of any law, governmental regulation, its memorandum and articles of association, other agreements or undertakings, and that it possesses the necessary knowledge in order to be able to perform pursuant to the Agreement, and the person signing this Agreement is authorized and empowered to do so.
- c) It has obtained or submitted any authorisation or approval or other action by, or notice to or filing with, any governmental authority or regulatory body that is required for the due execution, delivery and

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performance of this Agreement.

- d) This Agreement has been duly and validly executed and delivered and constitutes legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- e) There are no pending or threatened legal or administrative proceedings to which it is a party, which to the best of its knowledge would materially adversely affect its ability to perform its obligations under this Agreement.
- f) It has entered into this Agreement in connection with its line of business and the terms hereof have been individually tailored and negotiated.
- g) It is not relying upon any representation or warranty of the other Party other than those expressly set forth in this Agreement.
- h) It has entered into this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise).
- i) It has entered into this Agreement with a full understanding of the material terms and risks hereof, and is capable of assuming those risks.
- j) It has made its investment and trading decisions (including regarding the suitability hereof) based upon its own judgment and/or any advice from its advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party.
- k) The other Party is not acting as a fiduciary or an advisor for it, nor has given to it any assurance or guarantee as to the expected performance or result of this Agreement.
- l) Its registry account for Certificates is properly established in time to fulfil its delivery or acceptance obligations under the Agreement.

14. Limitation of Liability

- 14.1. Except in respect of any amounts payable under clause 16 of this General Agreement, the liability of each Party, irrespective of from whatever legal base it might be claimed, for any actions, omissions or failures of itself, its employees, officers, contractors and/or agents, that causes any damage, loss, cost or expenses incurred by the other Party is limited per transaction to an amount equal to the Total Contract Price set forth in the relevant Individual Contract.
- 14.2. This clause does not limit liability for damage due to gross negligence, intentional default or fraud of the Party, its employees, officers, contractors or agents used by such Party in performing its obligation under the Agreement. The liability of a Party does in no event include any indirect or consequential damages, loss of profit, business opportunity, goodwill or anticipated savings. Each Party shall make best effort in order to mitigate in a commercially reasonable manner its damage, loss, cost or expense in connection with the Agreement.
- 14.3. **ALL REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE SET FORTH IN THIS AGREEMENT, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO CONFORMITY WITH ANY MODEL OR SAMPLES, ARE DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT WITH RESPECT TO A PRODUCT STATED TO BE REGULATORILY CONTINUING, AND IN THAT CASE ONLY TO THE EXTENT SET FORTH HEREIN OR IN A PRODUCT ORDER, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY HEREUNDER WITH RESPECT TO ANY FUTURE ACTION OR FAILURE TO ACT OR APPROVAL OR FAILURE TO APPROVE BY ANY GOVERNMENTAL AUTHORITY OR ADMINISTRATOR.**

15. Force Majeure

- 15.1. **"Force Majeure"** means any circumstances which could not have reasonably been anticipated and avoided by a Party and are beyond a Party's reasonable control, including but not limited to war, explosion, natural calamities, general strike, riot, civil disturbances, sabotage, embargoes, acts, rules or regulations of national or local governmental division, subdivision, agencies or instrumentalities of any government, including currency, import or export prohibitions, acts of God, failure of any counterparty of Party A and other causes similar to the foregoing which are beyond the reasonable control of such Party.
- 15.2. If a Party is prevented, hindered or delayed in its performance of any of its obligations under this Agreement

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by Force Majeure, such Party shall be excused from the performance of such obligations during the existence of such cause, and shall not be responsible for any damages suffered by the other Party as a result of such suspended performance except as provided below in this provision, provided that the Party prevented from or delayed in performance by any such cause shall use commercially reasonable efforts to mitigate the effects of the Force Majeure event and the Parties shall consult about the possibilities of continuing the Agreement, in amended form or otherwise.

- 15.3. A Party who desires relief according to this provision must notify the other Party of the Force Majeure preventing or delaying its performance without delay (and shall keep the other Party informed of subsequent developments in such circumstances as they occur) and shall continue to take any actions within its power to comply as fully and timely as possible with its obligations under this Agreement and to keep the damage as small as possible. Such notification must be given in accordance with clause 20.
- 15.4. The Parties shall not be liable towards each other for any damages as a consequence of a Force Majeure event. Any damages that are incurred remain entirely for the account of the Party that has suffered such damages. Suspension of performance of a Party's obligations shall be of no greater scope and of no longer duration than reasonably required by a Force Majeure event.

16. Term and Termination

- 16.1. The General Agreement comes into force on the Date of Agreement specified in clause 1 of this General Agreement. Unless early terminated in accordance with its terms, this General Agreement shall remain in force until all rights and obligations under the Agreement are fully performed or discharged by both Parties ("**Term**").
- 16.2. The non-defaulting Party ("**Non-Defaulting Party**") may terminate (i) the Agreement including all, not fully performed, Individual Contracts based on the events specified under b) to and including f) below ("**Full Termination**") or (ii) only the not fully performed Individual Contract(s) affected by the default in case of a failure to transfer or accept one or more Certificates as specified under a) below ("**Partial Termination**") at any time without any juridical judicial intervention and in accordance with clause 20. Each of the below listed events shall be called an "**Event of Default**". The defaulting Party shall be called the "**Defaulting Party**":
- a) Failure of the Defaulting Party to transfer one or more Certificates on the relevant Delivery Date or failure of the Defaulting Party to accept one or more Certificates on the relevant Delivery Date and such failure is not cured within five (5) Business Days after written demand.
 - b) Failure of the Defaulting Party to make payment when due and required, which is not cured within five (5) Business Days after written demand.
 - c) Any other material or repeated breach of the Agreement, which is not cured within ten (10) Business Days after written demand.
 - d) Insolvency of or the launch of insolvency proceedings against the Defaulting Party, if the Defaulting Party has a receiver, administrative receiver, administrator, or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights. In all cases, the Agreement shall cease automatically at 23:59 hours on the day preceding the opening date of the insolvency proceedings of the Defaulting Party.
 - e) The Defaulting Party is unable to deliver or accept delivery of the Certificates for reasons of Force Majeure and such inability lasted for more than thirty (30) consecutive calendar days.
 - f) A Change in Law which is not resolved in accordance with clause 26.
- 16.3. In case of Full or Partial Termination, the notice of termination shall specify the relevant Event of Default, the terminated Individual Contract(s) and designate a day as an early termination date ("**Early Termination Date**"). The Early Termination Date may not be earlier than the day the termination notice is deemed to have been received and not later than twenty (20) Business Days after such date.
- 16.4. In case of a Partial Termination due to an Event of Default specified under clause 16.2 a), the Non-Defaulting Party shall be entitled to receive a compensation amount ("**Compensation Amount**") from the Defaulting Party in relation to the terminated Individual Contract(s) as follows:
- i. if the Seller is the Defaulting Party, the Compensation Amount shall be an amount equal to the difference (if positive) between: (a) the Market Price at which Buyer acting in a commercially

reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered Certificates as further specified below in clause 16.8; and (b) the Price per Certificate multiplied by the quantity of undelivered Certificates. This Compensation Amount shall be increased by any reasonable transaction costs and expenses which the Buyer incurs as a result of Seller's failure to deliver the Certificates; or

- ii. if the Buyer is the Defaulting Party, the Compensation Amount shall be an amount equal to the difference (if positive) between: (a) the Price per Certificate multiplied by the quantity of non-accepted Certificates; and (b) the Market Price as at which the Seller is or would be able to sell the quantity of non-accepted Certificates in the market acting in a commercially reasonable manner as further specified below in clause 16.8. This Compensation Amount shall be increased by any reasonable transaction costs and expenses which the Seller incurs as a result of Buyer's failure to accept the Certificates. For the avoidance of doubt, the Seller may additionally claim any outstanding amounts owed with respect to deliveries of Certificates made prior to the Early Termination Date.
- 16.5. In case of a Full Termination due to an Event of Default specified under clause 16.2 b), c) or d), the Non-Defaulting Party shall be entitled to receive a termination amount ("**Termination Amount**") from the Defaulting Party. The Termination Amount shall be calculated by the Non-Defaulting Party by calculating the sum (whether positive or negative) of all Settlement Amounts (as defined in clause 16.6 below) for all Individual Contracts *plus* any or all other amounts payable between the Parties under or in connection with the Agreement.
- 16.6. The "**Settlement Amount**" for an Individual Contract shall be the Gains *less* the aggregate of the Losses and Costs which the Non-Defaulting Party incurs as a result of the termination of the Individual Contract. For the purpose of this provision:
 - i. "**Costs**" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace a terminated Individual Contract and all reasonable legal fees, costs and expenses incurred by the Non-Defaulting Party in connection with its termination of such Individual Contract;
 - ii. "**Gains**" means an amount equal to the present value of the economic benefit to the Non-Defaulting Party (if any) (exclusive of Costs), resulting from the termination of an Individual Contract, determined in a commercially reasonable manner; and
 - iii. "**Losses**" means an amount equal to the present value of the economic loss to the Non-Defaulting Party (if any) (exclusive of Costs), resulting from its termination of an Individual Contract, determined in a commercially reasonable manner.
- 16.7. In calculating the Compensation Amount(s) or Settlement Amount(s), the Non-Defaulting Party shall not be required to enter into any replacement transactions.
- 16.8. If the Non-Defaulting Party does not enter into replacement transactions, when calculating the Compensation Amount or the Settlement Amount, the following market price sources shall be taken into account for the determination of the Market Price or Losses in the order of precedence as listed below, accordingly, a market price source recorded in a subsequent sub-clause can only be adopted if the market price source in the preceding paragraph is not available:
 - i. any published and reliable OTC market price index for corresponding or most comparable Certificates published for the Early Termination Date;
 - ii. the average of the quotations of at least three (3) independent leading market participants for corresponding or most comparable Certificates.
- 16.9. With effect as of the Early Termination Date, the Non-Defaulting Party shall calculate the Compensation Amount in case of a Partial Termination or the Termination Amount in case of a Full Termination. The Compensation Amount or the Termination Amount shall be deemed to be the sole and all-inclusive compensation for damages and costs incurred by the Non-Defaulting Party as a result of the Early Termination. The Compensation Amount or Termination Amount will be invoiced to the Defaulting Party and payment shall be due within five (5) Business Days after receipt of the invoice. By paying the Termination Amount, the Defaulting Party will be released from its obligations to deliver or accept Certificates and thereafter no other remedies are enforceable towards the Non-Defaulting Party under the Agreement.
- 16.10. Any termination under this clause 16 shall be without prejudice to the rights of the Parties accrued to the

Early Termination Date.

17. Co-operation and Best Efforts

Subject to the terms and conditions hereof, the Seller and the Buyer shall (a) co-operate with each other in connection with consummating the transactions contemplated by this Agreement; and (b) agree to use their best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. For purposes of this provision, the covenant of the Parties to use their "best efforts" shall not require any Party to (i) incur any unreasonable expenses, (ii) agree to materially limit the conduct of its business and/or (iii) divest itself of any material assets or properties, in each case except as otherwise contemplated hereunder.

18. Confidentiality

- 18.1. The Parties shall treat the contents of this Agreement and, if applicable, any arbitration award related to this Agreement and any other information of confidential nature with which they become acquainted in respect of the other Party's business or business operations ("**Confidential Information**") as confidential. Neither Party shall disclose Confidential Information without prior written consent of the other Party. For the purpose of this provision, Parties' affiliates are not deemed third parties.
- 18.2. The confidentiality obligations shall not apply to Confidential Information which is public knowledge or publicly available at the time of disclosure or required to be disclosed by law or governmental regulation or to any regulatory authority or to other third parties in order to perform this Agreement. This confidentiality obligation shall expire at the latest of (i) two (2) years after the last Delivery Date or (ii) termination of the General Agreement.

19. Assignment

- 19.1. Neither this Agreement, nor any rights or obligations hereunder, may be transferred by any Party without the prior written consent of the other Party and any purported assignment in violation of this clause 19 shall be void and unenforceable. Party A shall be entitled to assign and transfer its rights under this Agreement by way of security to or in favor of any bank or financial institution in relation to the financing of its business activities.

20. Notifications and Correspondence

- 20.1. All notices or other correspondence under this Agreement shall be in writing (including e-mail) and in the English language and shall be deemed to have been received by a Party:
 - a) if delivered by hand or courier, on the day of delivery;
 - b) if posted, on the 5th Business Day after being mailed; or
 - c) if sent by email, upon sending.
- 20.2. All such notices and other communications shall be addressed to the addresses stated in clause 3 and 4 of the General Agreement or in the Individual Contract or to such other addresses as may be notified in accordance with this provision.

21. Telephone Recordings and Personal Data Protection

- 21.1. Each Party consents to the recording of telephone calls with the other Party and that such records may be retained in confidence. Each Party agrees to notify its officers and employees of such recording and to obtain any necessary consent of such officers or employees.
- 21.2. Each Party shall have the necessary technical and organizational measures in place to comply with the applicable regulations relating to personal data protection.

22. Severability

In the event that any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent declared invalid or unenforceable without affecting the validity or enforceability of the other provisions of this Agreement, and the remainder of this Agreement shall remain binding on the parties hereto. However, in the event that any such provision shall be declared unenforceable due to its scope, breadth or duration, then it shall be modified to the scope, breadth or duration permitted by law or governmental or regulatory authority

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and shall continue to be fully enforceable as so modified.

23. Entire Agreement, No waiver

The Agreement supersedes all prior agreements and understandings, written and oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties. Any amendments to the Agreement shall be in writing and shall have no effect unless signed by the duly authorized representatives of the Parties. The waiver by either Party of a default or a breach by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach will not operate as a waiver of any default or breach.

24. Governing Law & Dispute Resolution, Waiver of jury trial

24.1. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts executed and to be performed in the State of California without regard to its conflict of laws principles.

24.2. Any dispute or claim arising out of or related hereto or any breach thereof or any need for interpretation related to any dispute arising out of or related hereto will be settled by binding arbitration administered by the American Arbitration Association in San Francisco, California. Either Party will have the right to commence an arbitration by written notice to the other Party after the expiration of a thirty (30) day negotiation period. The arbitration will be conducted as follows:

- A. There will be one arbitrator who has not previously been employed by either Party, is qualified by education or experience to decide the matters relating to the questions in dispute, and does not have a direct or indirect interest in either Party or a financial interest in the outcome of the arbitration and who is available within the time frames set forth herein. Such arbitrator will either be selected by mutual agreement by the Parties within thirty (30) days after written notice from the Party requesting arbitration, or failing agreement by such time, the arbitrator will be selected within the following fourteen (14) days by the AAA under the AAA Rules.
- B. The AAA Rules (including the Optional Rules for Emergency Protection Measures) apply to the extent not inconsistent with the rules herein specified. If the dispute is international in scope as defined in the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, the AAA's Supplementary Procedures for International Commercial Disputes shall apply.
- C. The hearing will be conducted on a confidential basis and except as required by law, neither the Parties nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all the parties.
- D. Each Party will be responsible for its own filing fees and case service fees in connection with its claim. Other expenses and arbitrator compensation will be borne equally, subject to final apportionment by the arbitrator. Each Party will be responsible for its own expenses and those of its counsel and representatives.
- E. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction by the Party in whose favor such award is made.
- F. Regardless of any procedures or rules of the AAA: (i) the arbitrator will have no authority to award punitive damages, or any other form of damages waived by the Parties pursuant to the Agreement, or attorneys' fees; and (ii) the Parties may by written agreement alter any time deadline, locations for meetings, or procedure outlined in this Section or in the AAA Rules.

24.3. **EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE**

WAIVED.**25. Collateral**

25.1. Except as expressly set forth in this Agreement, neither Party:

- a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever; nor
- b) shall be deemed to have reasonable grounds for insecurity with respect to the performance or creditworthiness of the other Party.

25.2. Furthermore, each Party hereby waives and disclaims any and all implied rights relating to financial assurances arising from the Uniform Commercial Code or any other code, statute, governmental regulation or court ruling applying similar doctrines.

26. Change in Law

26.1. “**Change in Law**” means the adoption or change of any law, rule or regulation or in the interpretation or application thereof by any governmental authority between the Date of Agreement and the Delivery Date, which materially impacts the General Agreement and/or one or more Individual Contracts which is/are in force at the date the Change in Law occurs.

26.2. In case of a Change in Law, the Parties agree to use reasonable efforts to amend this General Agreement and/or the affected Individual Contracts as necessary to take account of such Change in Law so that this General Agreement and/or the affected Individual Contracts may continue in full force and effect and the Parties may lawfully comply with their obligations hereunder.

26.3. In the event that the Parties are not able to reach an agreement within 30 (thirty) Business Days of such Change in Law, either Party may terminate this General Agreement and/or the affected Individual Contracts by giving written notice to the other Party. A termination of this Agreement in accordance with this clause shall be without prejudice to the rights and obligations of the Parties in respect of the Individual Contracts that are not affected by Change in Law, and without prejudice to and rights and obligations accrued or arising prior to termination of this Agreement. The risk of Change in Law after the Delivery Date shall be borne by the Buyer. No right of termination of this General Agreement and/or Individual Contracts shall exist in such case. Seller shall be entitled to keep any payment made by Buyer made under (an) Individual Contract(s) in respect of those Certificates which have already been transferred.

27. Forward Agreement

Each Party agrees that (a) this contract is a “forward contract” within the meaning of the United States Bankruptcy Code, (b) the remedies identified in this Agreement shall be “contractual rights” as provided for in 11 U.S.C. § 556 (as such provision may be amended from time to time) and (c) this Agreement meets the criteria for an exclusion from the definition of “swap” set forth in 7 U.S.C. §1(a)(47(B)(i) or (ii) (as such provision may be amended from time to time).

28. No Third Party Beneficiaries

Nothing herein is intended or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.

29. No Recourse to Members of Buyer

Silicon Valley Clean Energy Authority 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. Silicon Valley Clean Energy Authority will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. STX Commodities, LLC will have no rights and will not make any claims, take any actions or assert any remedies against any of Silicon Valley Clean Energy Authority’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Silicon Valley Clean Energy Authority or Silicon Valley Clean Energy Authority’s constituent members, in connection with this Agreement.

30. Counterparts

This 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. The Parties may rely on electronic or scanned signatures

as originals under this Agreement. Delivery of an executed signature page of this Agreement by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

31. Entire Agreement; No Oral Agreements or Modifications

This Agreement 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.


IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the Effective Date.

STX Commodities, LLC

Silicon Valley Clean Energy Authority

DocuSigned by:

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Name: Tim Pabst
Title: Managing Director

Name: Girish Balachandran
Title: Chief Executive Officer

Annex 1**[for reference purposes only]****Individual Contract**

This Individual Contract evidences the terms of the binding agreement between Seller and Buyer (as specified below) regarding the sale and purchase of Certificates. This Individual Contract is subject to, supplements and forms part of the General Agreement on sale and purchase of Certificates entered into between the Parties (“General Agreement”).

1. Deal date		[deal date]
2. Reference Number	Seller	[reference]
	Buyer	[reference]
Seller	Company	[account]
	Address	[account address]
	Contact person	[contact person]
	Phone	[phone number]
	Email	[email address]
	Invoice address	[account address]
	Bank account details	[bank details] SWIFT: [bank details] IBAN: [bank details]
	Registry account no	[registry account]
Buyer	Company	[account]
	Address	[account address]
	Contact person	[contact person]
	Phone	[phone number]
	Email	[email address]
	Invoice address	[account address]
	Bank account details	[bank details] SWIFT: [bank details] IBAN: [bank details]
	Registry account no	[registry account]
5. Product	Type of Certificate	[product]
	Technology	[technology]
	Label	[label]
	Production domain	[production domain]
	Production support	[Not specified/ No support]
6. Transfer/ Redemption	[Transfer] or [Redemption]	

7. Quantity, Price, Production period, Delivery date, Payment date

Quantity	Price	Production period	Delivery date	Payment date
\$volume \$unit	\$price \$currency/ \$unit	\$production_period	\$delivery_date	\$payment_days days after delivery

8. Comment terms [comment terms]

In case of any objections, please contact us immediately.

STX Commodities, LLC

[name counterparty]

Name
Title:

Name:
Title:

Certificate Of Completion

Record Tracking

Signer Events	Signature	Timestamp

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/2/2023 8:57:45 PM
Certified Delivered	Security Checked	5/2/2023 9:37:09 PM
Signing Complete	Security Checked	5/2/2023 9:37:14 PM
Completed	Security Checked	5/2/2023 9:37:14 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, STX Group B.V. (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact STX Group B.V.:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: anita.soos@stxgroup.com

To advise STX Group B.V. of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at anita.soos@stxgroup.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from STX Group B.V.

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to anita.soos@stxgroup.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with STX Group B.V.

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to anita.soos@stxgroup.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

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- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify STX Group B.V. as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by STX Group B.V. during the course of your relationship with STX Group B.V..

Annex 1

Confirmation of Individual Contract: Renewable Energy Certificate (REC) US

This Confirmation evidences the terms of the binding agreement between Seller and Buyer (as specified below) regarding the transaction described in this Confirmation. This Confirmation is subject to the General Agreement regarding the sale and purchase of Certificates entered into between the Parties (the General Agreement and Confirmation, together are referred to as "the Agreement"). In the event of a conflict between the General Agreement and the Confirmation, the terms of the Confirmation shall govern.

6. Transfer or redemption: Transfer

8. California RPS Standard Terms and Conditions

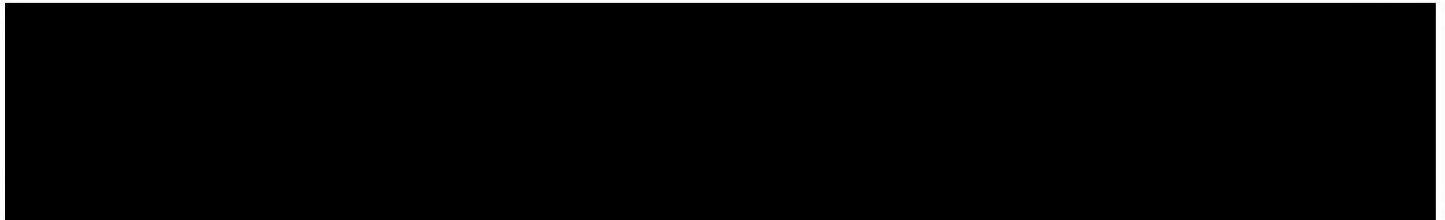
- a. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the California Energy Commission ("CEC") as an Eligible Renewable Energy Resource ("ERR") as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6]
- b. Seller 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-1]

- c. 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 REC-2]
- d. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]

9. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a written document executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a written document executed by both Parties.

10. Comment terms N/ A



IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

STX Commodities LLC


DocuSigned by:

29F0DBDD025240B...

Name: Tim Pabst

Title: Managing Director

Silicon Valley Clean Energy Authority

DocuSigned by:

5CA64B9AC4C24C3...

Name: Girish Balachandran

Title: Chief Executive Officer

Certificate Of Completion

Record Tracking

Signer Events	Signature	Timestamp

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
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Certified Delivered	Security Checked	5/2/2023 9:37:17 PM
Signing Complete	Security Checked	5/2/2023 9:37:20 PM
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To advise STX Group B.V. of your new email address

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- ii. send us an email to anita.soos@stxgroup.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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FIRST AMENDMENT TO
CONFIRMATION
BETWEEN
MORGAN STANLEY CAPITAL GROUP INC.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

THIS FIRST AMENDMENT TO CONFIRMATION (the “Amendment”) effective as of March 21, 2023 (“Effective Date”), is made between Silicon Valley Clean Energy Authority, a California joint powers authority (“SVCE”) and Morgan Stanley Capital Group Inc. (“Morgan Stanley”) (each of SVCE and Morgan Stanley referred to individually as a “Party” or collectively as the “Parties”). This Amendment is being provided pursuant to and in accordance with the terms and provisions of the Master Power Purchase and Sale Agreement dated November 23, 2016 (the “Master Agreement”) between the Parties and constitutes part of and is subject to the terms and provisions of such Master Agreement. This Amendment, the Confirmation (as defined below) and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

WHEREAS, the Parties entered into that certain Transaction dated as of March 17, 2022 for the purchase and sale of Energy, Renewable Energy and Carbon Free Energy (the “Confirmation”); and

WHEREAS, the Parties have agreed to amend certain terms and conditions of the Confirmation.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definitions; Interpretation. All capitalized terms used in this Amendment (including the recitals) and not otherwise defined herein shall have the meanings assigned to them in the Master Agreement or Confirmation.

Section 2. Amendment to the Agreement. The Agreement is hereby amended by:

- (i) Replacing the End Date in the table in DELIVERY PERIOD with the following wording:

January 31, 2023

- (ii) Replacing the entire table found in Exhibit B immediately below “Category 1 Renewable” and replacing it with the following wording:

Section 3. Representations and Warranties. To induce the other Party to enter into this Amendment, each Party hereby represents and warrants that (i) it has the corporate, governmental or other legal capacity, authority and power to execute this Amendment, to deliver this Amendment and to perform its obligations under the Agreement as amended hereby, and has taken all necessary action to authorize the foregoing; (ii) the execution, delivery and performance of this Amendment does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or Governmental Authority applicable to it or any of its assets; (iii) all

[Signature Page to First Amendment to Confirmation]

governmental and other consents required to have been obtained by it with respect to this Amendment have been obtained and are in full force and effect and such consents have been obtained without the requirement that this Amendment be materially modified; (iv) its obligations under the Agreement as amended hereby, constitute its legal, valid and binding obligations, enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law) and (v) no Default with respect to it has occurred or is continuing.

Section 4. Miscellaneous.

(a) Agreement Otherwise Not Affected. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto. Except as expressly set forth in this Amendment, all terms and conditions of the Confirmation remain unchanged, are in full force and effect, and remain binding upon the Parties. The execution and delivery of, or acceptance of, this Amendment and any other documents and instruments in connection herewith by either Party shall not be deemed to create a course of dealing or otherwise create any express or implied duty by it to provide any other or further amendments, consents, or waivers in the future.

(b) No Reliance. Each Party hereby acknowledges and confirms that it is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or with the other Party or its agents, representatives or attorneys not set forth within the Agreement or this Amendment.

(c) Costs and Expenses. Each Party shall be responsible for any costs and expenses incurred by such Party in connection with the negotiation, preparation, execution and delivery of this Amendment and any other documents to be delivered in connection herewith.

(d) Binding Effect. This Amendment shall be binding upon, inure to the benefit of and be enforceable by Buyer, Seller and their respective successors and assigns.

(e) Governing Law. **THIS AMENDMENT SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED UNDER THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**


(f) Amendments. This Amendment may not be modified, amended or otherwise altered except by written instrument executed by the Parties' duly authorized representatives.

(g) Effectiveness; Counterparts. This Amendment shall be binding on the Parties as of the Effective Date once it has been fully executed by the Parties. This Amendment may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Amendment. Delivery of an executed signature page of this Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

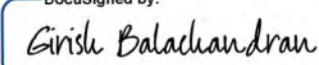
(h) Interpretation. This Amendment is the result of negotiations between the Parties and has been reviewed by counsel to each of the Parties, and is the product of all Parties hereto. Accordingly, this Amendment shall not be construed against either Party merely because of such Party's involvement in the preparation hereof.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Amendment, as of the Effective Date.

MORGAN STANLEY CAPITAL GROUP INC.

By: 
Name: Brent Masucci
Title: Vice President

SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority

DocuSigned by:

By: Girish Balachandran
Name: GIRISH Balachandran
Title: CEO

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between City of San José, a California municipal corporation (“Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of the last dated signature on the signature page hereto (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 thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ **Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ **Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2

DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, (i) monthly Supply Plans and (ii) annual Supply Plans if the Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months specified in Appendix B, in accordance with the Tariff and CPUC requirements and no later than the initial Compliance Showing Deadline for such Showing Month, identifying and confirming the transfer of the Expected Contract Quantity of Product to Purchaser for each Showing Month. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller shall sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted

for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate

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

Capacity shall be provided no later than the Notification Deadline for Purchaser'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 that includes the Replacement Units for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser's Compliance Showings; and
- (d) If Seller does not comply with the requirements of Sections 2.3(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 Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

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, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization

of its owned or controlled assets or market positions to minimize these penalties, fines or costs.

- (c) If Seller fails to pay the foregoing damages, penalties, fines or costs, or fails to reimburse Purchaser for those damages, penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those damages, penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than three (3) Business Days before the Compliance Showing Deadline for each Showing Month for which Purchaser has resold the Product.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.
- (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 make a monthly payment to Seller for the Product by the later of (i) ten (10) calendar days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, and if such day is not a Business Day, the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO,

notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4

OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5 RESERVED

ARTICLE 6 ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with

Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

Purchaser may disclose this Confirmation and any information and documentation related to this Confirmation as necessary in order to support its Compliance Showings, to otherwise show it has met its Compliance Obligations, or to otherwise comply with any law, statute, ordinance, court order, subpoena, requirement of any Governmental Body or other governmental entity having jurisdiction over Purchaser; (ii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser and any of Purchaser’s financial institutions, including prospective financial institutions.

Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 7920 et seq.) and otherwise has an obligation to disclose public records, as defined by the California Public Record Act, including this Confirmation and the documentation and information related to this Confirmation (which may be partially redacted by Purchaser). Seller acknowledges and agrees that this Confirmation, and information and documentation provided in connection with this Confirmation, including confidential, proprietary, or trade secret information, pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), may be subject to the requirements of the California Public Records Act, and Purchaser shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Confirmation, including confidential, proprietary, or trade secret information, that is subject to public disclosure under the California Public Records Act. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act, or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act. Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act. Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party, and the

disclosing Party shall incur all costs arising out of any such legal steps taken to prevent disclosure of information to the Requestor.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 Designated Fund and Limited Obligations

- (a) Designated Fund. Seller is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Seller has created and set aside a designated fund (the “Designated Fund”) for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San

José Clean Energy's obligations, Seller agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Seller's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Seller shall provide Purchaser with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

- (b) Limited Obligations. Seller's payment obligations under the Agreement are special limited obligations of the Seller payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

6.8 City of San José Standard Provisions

- (a) Nondiscrimination/Non-Preference. Purchaser shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Purchaser from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Purchaser to file, and cause any Purchaser's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.
- (b) Conflict of Interest. Purchaser represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Purchaser certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Purchaser shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Purchaser has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Seller in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Purchaser's violation of this subsection (b) is a material breach.
- (c) Environmentally Preferable Procurement Policy. Purchaser shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving

Bottled Water,” and San José City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy,” as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this subsection (c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Seller to terminate this Agreement.

- (d) Gifts Prohibited. Purchaser represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Purchaser shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Purchaser’s violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Purchaser represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Purchaser shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

6.9 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 Effective 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.”

6.10 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, 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.

6.11 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:**City of San José, a California municipal corporation**By: *Paul Innamorato*Name: Paul InnamoratoTitle: Principal Power Resources SpecialistDate: May 3, 2023**Silicon Valley Clean Energy Authority, a California joint powers authority**By: *Girish Balachandran*Name: Girish BalachandranTitle: Chief Executive OfficerDate: May 3, 2023**Approved as to form:**By: *Rosa Tsongtaatarii*Name: Rosa TsongtaatariiTitle: Chief Deputy City AttorneyDate: May 3, 2023

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showing Deadline” means, for each Showing Month, the Compliance Showing plan submission due date for such Showing Month. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan, such dates may be modified by the CAISO from time to time throughout the Delivery Period.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is five (5) Business Days before the Compliance Showing Deadline.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Appendix B hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified Section 2.3 hereof. A Replacement Unit shall not utilize coal or coal materials as a source of fuel, must be a specific resource that is connected directly to the CAISO controlled grid, or be under the operational control of CAISO, and may not be an unspecified import.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“San José Clean Energy” means the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit(s) described in Appendix B.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☒ RAR ☐ Local RAR ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: _____

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): n/a

Flexible Capacity Category (if applicable): n/a

<div>_____</div> <div>_____</div> <div>_____</div>	<div>_____</div> <div>_____</div> <div>_____</div>	<div>_____</div> <div>_____</div> <div>_____</div>	<div>_____</div> <div>_____</div>
<div>_____</div>	<div>_____</div>	<div>_____</div>	<div>_____</div>

Unit 1

Unit Specific Information	
Resource Name	COLGATE HYDRO UNIT 1
Physical Location	Yuba County, CA
CAISO Resource ID	COLGAT_7_UNIT 1
SCID of Resource	YCWA
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	Hydro
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	N/A
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

Seller: City of San José	Purchaser: Silicon Valley Clean Energy Authority
All Notices: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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<div>[REDACTED]</div>	<div>[REDACTED]</div>
<div>[REDACTED]</div>	<div>[REDACTED]</div>

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

CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between Morgan Stanley Capital Group Inc. ("Seller")
And
Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer")
dated: November 23, 2016
Transaction Date: April 4, 2023 (the "Effective Date")

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the "CCA");

WHEREAS, Buyer is a California joint powers authority, which has established Silicon Valley Clean Energy Authority for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer's CCA Implementation Plan and Statement of Intent ("Implementation Plan") to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on September 27, 2016;

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:

"ACS" means "asset-controlling supplier" as that term is defined in the Cap and Trade Regulations.

"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.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), 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.

“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.11-01-025, 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.

“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) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“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.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of Santa Clara.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“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.

“Energy” means electrical energy, measured in MWh.

“Exhibits” shall be those certain Exhibits, which are 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.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

“Inter-SC Trade” or “IST” has the meaning set forth in the Tariff.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“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 where the source of power is wind, solar or hydroelectric.

“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. Such Renewable Energy Contract Quantity, shall be comprised of (i) Minimum Renewable Energy Quantity and (ii) Optional Incremental Renewable Energy Quantity, if any.

“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.

“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.

“Security Documents” has the meaning set forth in the Master Agreement.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“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.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“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.

“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, the “Product,” which is comprised of the quantity of Renewable Energy (Category 1 Renewable) specified in Section 7.

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 written notice to Buyer thereof; provided further any such additional Specified Sources of Power shall meet the requirement of Renewable Energy as defined herein. No Energy delivered under this Confirmation shall be procured from unit-specific sources that are nuclear or coal-fired resources. 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 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. Buyer agrees to retire the RECs purchased from Seller hereunder no later than four months after the year in which such RECs are produced 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

(1) Seller Representations and Warranties: Seller represents and warrants:

- (a) Seller has not sold the Product or any Program 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; and

- (c) If and to the extent that the Renewable Energy 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 (iv) below as of the Effective Date and throughout the Delivery Period:
- i. The original upstream third party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);
 - ii. This Agreement transfers only Renewable Energy that has not yet been generated prior to the later of the Effective Date or the Delivery Period;
 - iii. The Energy transferred hereunder is transferred to Buyer in real time; and
 - iv. If the Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

3.



4. **DELIVERY POINT.**

Product	Delivery Point
Renewable Energy	CAISO or a California Balancing Authority inside the California State boundaries

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 Energy will

be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). Unless otherwise mutually agreed between the Parties, Renewable Energy will be scheduled to the applicable delivery point without (an) IST.

6. PRICING.

Renewable Energy Contract Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit A multiplied by the portion of the Renewable Energy Contract Quantity delivered by Seller as evidenced by the quantity of WREGIS Certificates in Seller's WREGIS account that are available for transfer to Buyer. Seller shall transfer RECs associated with the applicable Renewable Energy Contract Quantity to Buyer through WREGIS within five (5) days of receipt of payment from Buyer.

7. CONTRACT QUANTITIES.

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 any and all Renewable Energy Credits associated with such Renewable Energy. Renewable Energy under this contract must be both (a) PCC1-eligible and (b) on the CRS attestation list for Green-E or produced by one or more renewable generating facilities that have a valid Green-E Energy Generator attestation on file (with an expiration date occurring on or after the final date of deliveries associated with the prospective transaction. Generators will be using fuel sources of either Wind or Solar as specified in Exhibit A.

8. MONTHLY BILLING SETTLEMENT.

8.1 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer no later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

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 PROVISIONS.**

12.1 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or the ongoing viability of the CCA.

- (a) Annual Reports. The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 23, 2016 (the "Master Agreement") between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the 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 the Exhibits identified below and that are attached hereto:
Exhibit A – Renewable Energy Contract Quantity and Price Schedule

**MORGAN STANLEY CAPITAL GROUP
INC.**

Sign: Katie Martin

Print: Katie Martin

Title: Vice President

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

Sign: DocuSigned by:
Amrit Singh
A88F4DF02E8F467...

Print: Amrit Singh

Title: CFO and Director of Admin Services

Exhibit A



Joint CCA (Sells) WSPP Standard RA Confirmation**WSPP RESOURCE ADEQUACY CONFIRMATION**

This Confirmation confirms the transaction between Peninsula Clean Energy, a California joint powers authority (“Seller”) and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of May 8, 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 12, 2021 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ **Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ **Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, (i) monthly Supply Plans and (ii) annual Supply Plans if the Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months specified in Appendix B, in accordance with the Tariff and CPUC requirements and no later than the initial Compliance Showing Deadline for such Showing Month, identifying and confirming the transfer of the Expected Contract Quantity of Product to Purchaser for each Showing Month. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller shall sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted

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for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity

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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and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser'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 that includes the Replacement Units for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser's Compliance Showings; and
- (d) If Seller does not comply with the requirements of Sections 2.3(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 Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

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, 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

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commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs.

- (c) If Seller fails to pay the foregoing damages, penalties, fines or costs, or fails to reimburse Purchaser for those damages, penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those damages, penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than three (3) Business Days before the Compliance Showing Deadline for each Showing Month for which Purchaser has resold the Product.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.
- (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,

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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 make a monthly payment to Seller for the Product by the later of (i) ten (10) calendar days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, and if such day is not a Business Day, the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

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- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

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- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
RESERVED

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then

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Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Purchaser acknowledges that Seller is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Seller may be required to make public this Confirmation (which may be partially redacted by Seller) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice

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from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Except as provided above, and notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members of Seller

Seller is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Purchaser will have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller's constituent

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members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Seller's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 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.”

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- (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 Effective 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.”

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- (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

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“public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the “Mobile-Sierra” doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010).

- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, 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 Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

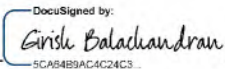
[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**Peninsula Clean Energy, a California
joint powers authority**

By: Janis C. Pepper
Name: Janis Pepper
Title: CEO

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By: 
Name: Girish Balachandran
Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showing Deadline” means, for each Showing Month, the Compliance Showing plan submission due date for such Showing Month. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan, such dates may be modified by the CAISO from time to time throughout the Delivery Period.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount

of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is five (5) Business Days before the Compliance Showing Deadline.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Appendix B hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified Section 2.3 hereof. A Replacement Unit shall not utilize coal or coal materials as a source of fuel, must be a specific resource that is connected directly to the CAISO controlled grid, or be under the operational control of CAISO, and may not be an unspecified import.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit(s) described in Appendix B.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

APPENDIX B PRODUCT AND UNIT INFORMATION

Product:

☒ RAR

☐ Local RAR

☐ Flexible Capacity

and all Capacity Attributes related to such Product.

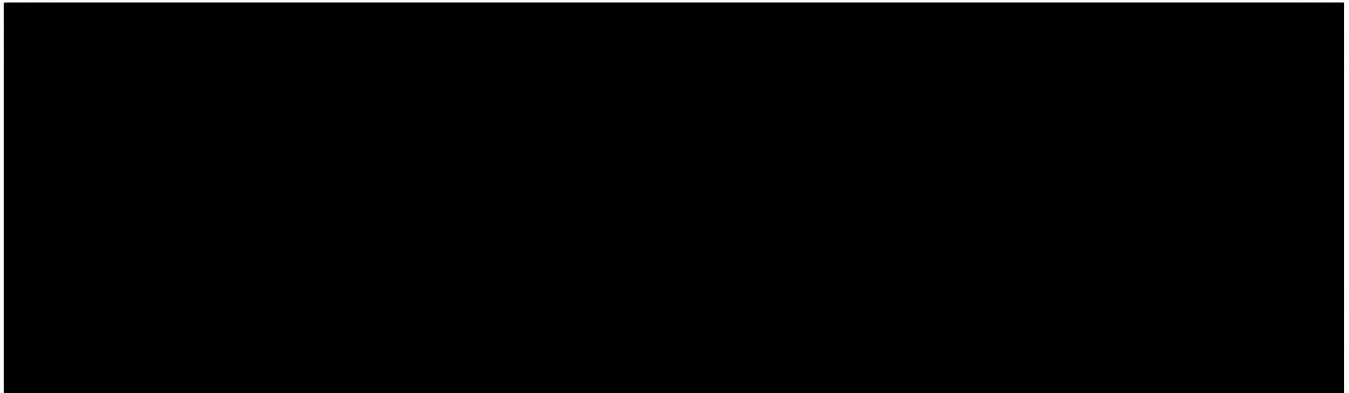
Additional Product Information (fill in all that apply):

CAISO Zone: South

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): N.A

Flexible Capacity Category (if applicable): N/A



Unit 1

Unit Specific Information	
Resource Name	EdSan 2 Edwards 1B
Physical Location	Mojave, CA
CAISO Resource ID	SANBRN_2_EESSB2
SCID of Resource	TGEM
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Solar plus Storage
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	SCE
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

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

[illegible]

<div>[REDACTED]</div>	<div>[REDACTED]</div>
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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

Joint CCA WSPP Standard RA Confirmation**WSPP RESOURCE ADEQUACY CONFIRMATION**

This Confirmation confirms the transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Seller") and **Peninsula Clean Energy**, a California joint powers authority ("Purchaser"), and each individually a "Party" and together the "Parties", dated as of April 26, 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 12, 2021 (the "WSPP Agreement"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ **Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ **Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, (i) monthly Supply Plans and (ii) annual Supply Plans if the Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months specified in Appendix B, in accordance with the Tariff and CPUC requirements and no later than the initial Compliance Showing Deadline for such Showing Month, identifying and confirming the transfer of the Expected Contract Quantity of Product to Purchaser for each Showing Month. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller shall sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's

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instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article Five as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (h) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.
- (c) ☒ ***If checked, the following provision and related definitions are applicable.***

Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be

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reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than three (3) Business Days before the initial Compliance Showing Deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser'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 that includes the Replacement Units for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser's Compliance Showings; and
- (d) If Seller does not comply with the requirements of Sections 2.3(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 Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may

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provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within five (5) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs.
- (c) If Seller fails to pay the foregoing damages, penalties, fines or costs, or fails to reimburse Purchaser for those damages, penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those damages, penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the

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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 four (4) Business Days before the Compliance Showing Deadline for each Showing Month for which Purchaser has resold the Product.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.
- (d) 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 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 make a monthly payment to Seller for the Product by the later of (i) ten (10) calendar days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, and if such day is not a Business Day, the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller

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may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.

- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to

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demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller’s Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit’s SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
RESERVED

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ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a)
 - (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations;
 - (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans;
 - (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and
 - (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an

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exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

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Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members

Purchaser and Seller are organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Purchaser nor Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any Party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 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:

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- “(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 Effective 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

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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

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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.”

6.9 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 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

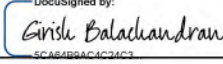
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be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By: 
Name: Girish Balachandran
Title: CEO

**Peninsula Clean Energy, a California joint
powers authority**

By: Janis C. Pepper
Name: Janis Pepper
Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showing Deadline” means, for each Showing Month, the Compliance Showing plan submission due date for such Showing Month. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan, such dates may be modified by the CAISO from time to time throughout the Delivery Period.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the

amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“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” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is four (4) Business Days before the Compliance Showing Deadline.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Appendix B hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified Section 2.3 hereof. A Replacement Unit shall not utilize coal or coal materials as a source of fuel, must be a specific resource that is connected directly to the CAISO controlled grid, or be under the operational control of CAISO, and may not be an unspecified import.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing 1 MW of System Capacity (as defined under such confirmation) from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit(s) described in Appendix B.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

APPENDIX B PRODUCT AND UNIT INFORMATION

Product:

☒ RAR ☐ Local RAR ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

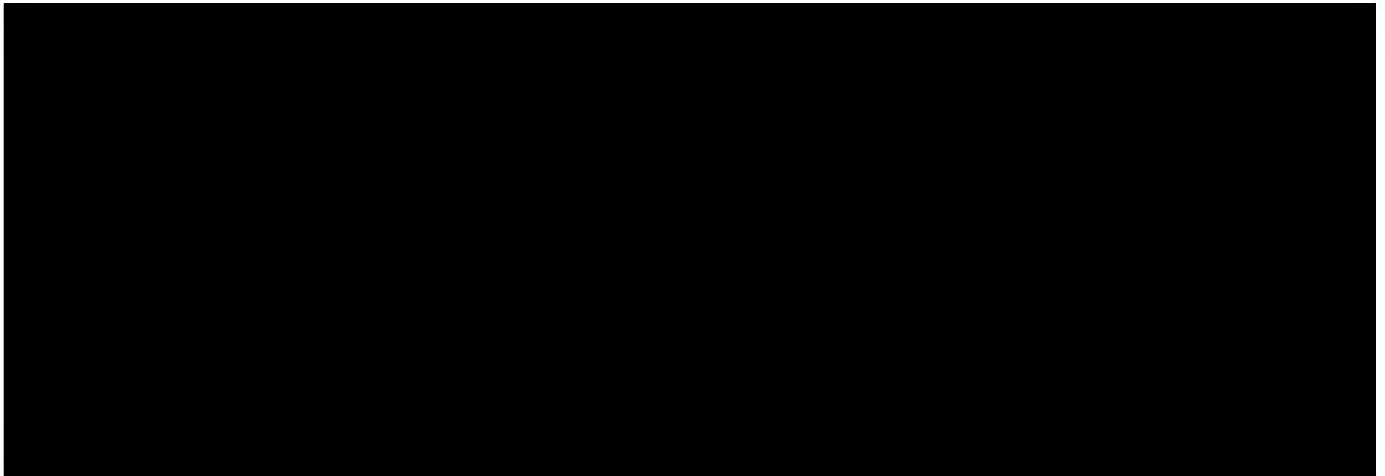
Additional Product Information (fill in all that apply):

CAISO Zone: _____

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): N/A



Unit 1

Unit Specific Information	
Resource Name	High Desert Power Project Aggregate
Physical Location	Victorville, CA
CAISO Resource ID	HIDSRT_2_UNITS
SCID of Resource	TS30
Unit NQC by month (e.g., Jan=50, Feb=65):	830
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	SCE
Prorated Percentage of Unit Factor	N/A
Prorated Percentage of Unit Flexible Factor	N/A
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

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

[illegible]

<div>[REDACTED]</div>	<div>[REDACTED]</div>
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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

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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **Peninsula Clean Energy**, a California joint powers authority ("Seller") and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Purchaser"), and each individually a "Party" and together the "Parties", dated as of April 26, 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 12, 2021 (the "WSPP Agreement"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

**ARTICLE 1
TRANSACTION TERMS**

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

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**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, (i) monthly Supply Plans and (ii) annual Supply Plans if the Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months specified in Appendix B, in accordance with the Tariff and CPUC requirements and no later than the initial Compliance Showing Deadline for such Showing Month, identifying and confirming the transfer of the Expected Contract Quantity of Product to Purchaser for each Showing Month. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller shall sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's

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Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

- (c) ☒ ***If checked, the following provision and related definitions are applicable.***

Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than three (3) Business Days before the initial Compliance Showing Deadline for such Showing Month. Seller's rights under the Swap

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Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser'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 that includes the Replacement Units for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser's Compliance Showings; and
- (d) If Seller does not comply with the requirements of Sections 2.3(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 Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate

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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, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs.
- (c) If Seller fails to pay the foregoing damages, penalties, fines or costs, or fails to reimburse Purchaser for those damages, penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those damages, penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

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- (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 Compliance Showing Deadline for each Showing Month for which Purchaser has resold the Product.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, and Purchaser shall have the right to retain and receive all revenues from such re-sale.

**ARTICLE 3
PAYMENTS**

3.1 Payment

Purchaser shall make a monthly payment to Seller for the Product by the later of (i) ten (10) calendar days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, and if such day is not a Business Day, the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

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- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

**ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS**

4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

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- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

**ARTICLE 5
RESERVED**

**ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS**

6.1 Confidentiality

Each Party to this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

6.2 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.3 Governing Law

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Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.4 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.5 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 such Party's 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.

6.6 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:

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- “(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(a) is deleted in its entirety replaced with the following:
- “If an Event of Default shall have occurred and be continuing, the Non- Defaulting Party, upon written notice to the Defaulting Party, shall have the right to (i) suspend performance under any or all transactions under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single transaction, and (ii) exercise any remedy available at law or equity.”
- (d) 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.
- (e) Section 22.2(b) is amended by inserting the following as the penultimate paragraph in Section 22.2(b):
- “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.”
- (f) 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.”

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- (g) Section 22.3(e) is deleted in its entirety and replaced with the following:
“[Intentionally omitted]”
- (h) 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.”
- (i) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (j) 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”.
- (k) 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.”

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- (l) In Section 34.4, the phrase “arbitration or” is deleted from the first line.
- (m) 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.”

- (n) Section 37 is amended by inserting the following in the beginning thereof: “On the date of entering into this Confirmation,”.
- (o) 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

**Joint CCA WSPP Standard RA Confirmation
CCA to CCA RA Purchases and Sale**

“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.”

6.7 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, 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.

6.8 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

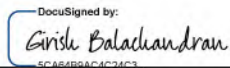
[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

**Peninsula Clean Energy, a California
joint powers authority**

By: Janis C. Pepper
Name: Janis Pepper
Title: CEO

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By: 
Name: Girish Balachandran
Title: CEO

APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showing Deadline” means, for each Showing Month, the Compliance Showing plan submission due date for such Showing Month. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan, such dates may be modified by the CAISO from time to time throughout the Delivery Period.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the

amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is ten (10) Business Days before the Compliance Showing Deadline.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Appendix B hereof, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified Section 2.3 hereof. A Replacement Unit shall not utilize coal or coal materials as a source of fuel, must be a specific resource that is connected directly to the CAISO controlled grid, or be under the operational control of CAISO, and may not be an unspecified import.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing 2 MW of Product (as defined under such confirmation) from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit(s) described in Appendix B.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

APPENDIX B PRODUCT AND UNIT INFORMATION

Product:

☒ RAR ☐ Local RAR ☒ Flexible Capacity

and all Capacity Attributes related to such Product.

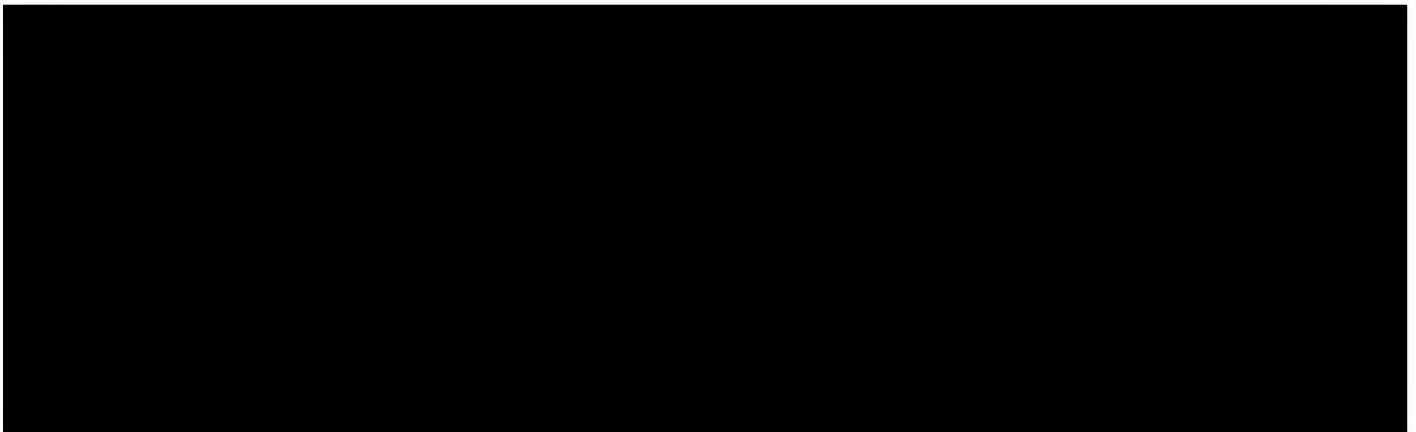
Additional Product Information (fill in all that apply):

CAISO Zone: _____

Resource Category (MCC Bucket): 1

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): 2



Unit 1

Unit Specific Information	
Resource Name	Antelope Solar 2 LAB
Physical Location	
CAISO Resource ID	BIGSKY_2_AS2BT1
SCID of Resource	AIE5
Unit NQC by month (e.g., Jan=50, Feb=65):	
Unit EFC by month (e.g., Jan=30, Feb=50)	
Resource Type (e.g., gas, hydro, solar, etc.)	
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	2
TAC Area (e.g., PG&E, SCE)	PG&E
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

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

<div>[REDACTED]</div>	<div>[REDACTED]</div>
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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 May 12, 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

EXECUTION VERSION

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.

EXECUTION VERSION

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).

EXECUTION VERSION

5.4 Governing Law

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:

FDW

CONSTELLATION ENERGY
GENERATION, LLC

By: Matthew A. Stasch
Name: Matthew A. Stasch
Title: VP, Chief Risk Officer

SILICON VALLEY CLEAN ENERGY
AUTHORITY

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

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.

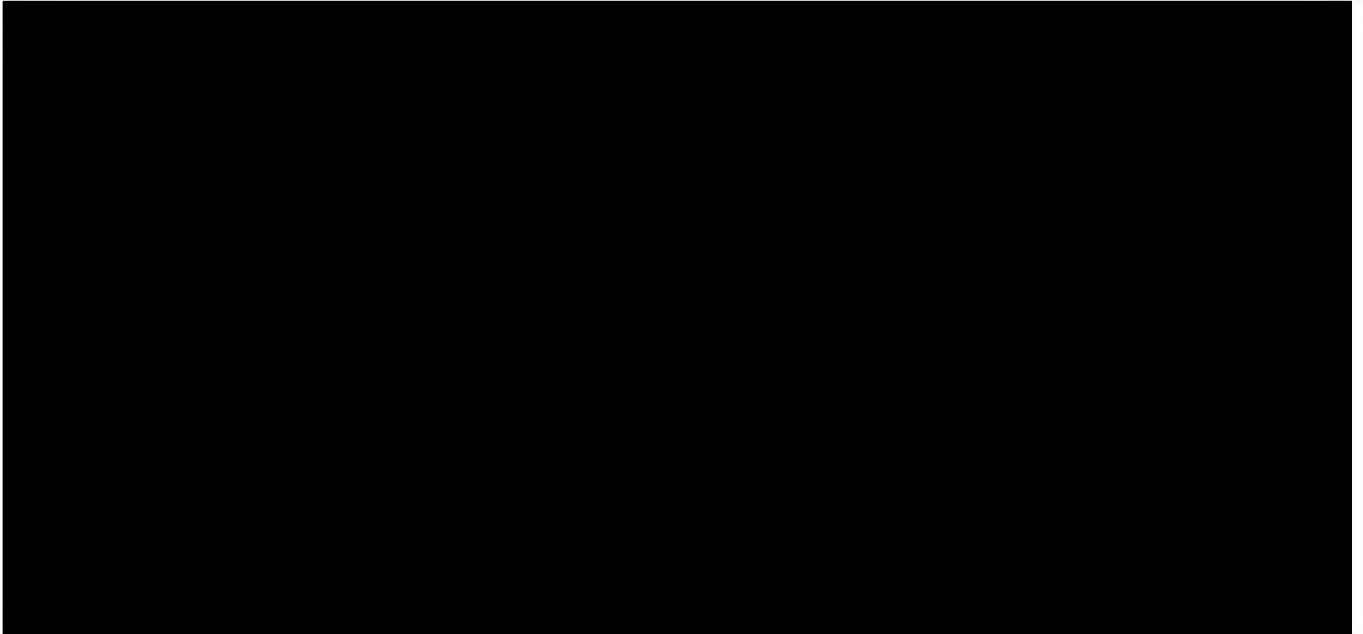
Additional Product Information (fill in all that apply):

CAISO Zone: South

MCC Bucket: 4

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): 1



Unit 1

Unit Specific Information	
Resource Name	Sentinel Energy Center
CAISO Resource ID	SENTNL_2_CTG5
SCID of Resource	SCE1
Unit NQC by month (e.g., Jan=50, Feb=65):	107.52
Unit EFC by month (e.g., Jan=30, Feb=50)	107.52
Resource Type (e.g., gas, hydro, solar, etc.)	Gas
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
Path 26 (North or South)	South
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
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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**LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT**

Resource Adequacy Contract Number: [REDACTED]

This confirmation letter (“Confirmation”) confirms the transaction (the “Transaction”) between San Diego Gas & Electric Company (“Seller”) and Silicon Valley Clean Energy Authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of May 12, 2023 (the “Confirmation Execution Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the “EEI Agreement”) with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the “Master Agreement”). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

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Name: Silicon Valley Clean Energy Authority

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The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
and Conditions

- ☐ Optional provision in Section 2.4.
If not checked, inapplicable.

Article Four

Remedies for Failure
to Deliver or Receive

- ☒ Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A:
☐ Party A: N/A_____ Cross Default Amount: N/A_____
☐ Other Entity: N/A_____ Cross Default Amount: N/A_____
- ☐ Cross Default for Party B:
☐ Party B:_____ Cross Default Amount: _____
☐ Other Entity:_____ Cross Default Amount: _____

5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
☐ Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:
☐ _____
☐ Option C (No Setoff)

Article 8

Credit and
Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

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- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
- (e) Guarantor for Party B: N/A
 Guarantee Amount: N/A

8.2 Party B Credit Protection

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
 If applicable, complete the following:
☐ It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
☐ Other:
 Specify: _____
- (e) Guarantor for Party A: N/A
 Guarantee Amount: N/A

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Article 10

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.**Schedule M**

- ☐ Party A is a Governmental Entity or Public Power System
☒ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.
2. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".
3. In Section 2.1, delete the first sentence in its entirety and replace with the following:

"A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a "Confirmation")."
4. Section 2.3 is deleted in its entirety and replaced with the following:

"2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."
5. Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.
6. Section 10.2(ii) of the Master Agreement shall be modified by inserting "Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation," at the beginning of the first sentence in such section.

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7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“10.6 THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For

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- purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed the "Replacement Price" for this Transaction.
- 1.9 "Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit's Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
 - 1.10 "Compliance Showing" means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
 - 1.11 "Confirmation" has the meaning specified in the introductory paragraph.
 - 1.12 "Confirmation Execution Date" has the meaning specified in the introductory paragraph.
 - 1.13 "Contract Price" means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
 - 1.14 "Contract Quantity" means the quantity of Product (in MW) as set forth in Section 3.5.
 - 1.15 "Contract Term" has the meaning set forth in Section 2.1.
 - 1.16 "CPUC" means the California Public Utilities Commission.
 - 1.17 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
 - 1.18 "CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program as provided in the CPUC Decisions.
 - 1.19 "Credit Rating" means, with respect to any entity, the rating assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.
 - 1.20 "Delivery Period" has the meaning specified in Section 3.3.
 - 1.21 "Emission Reduction Credits" or "ERC(s)" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such

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- district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.22 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
 - 1.23 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
 - 1.24 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
 - 1.25 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
 - 1.26 “GADS” means the Generating Availability Data System, or its successor.
 - 1.27 “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.
 - 1.28 “Local Capacity Area” has the meaning set forth in the Tariff.
 - 1.29 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.

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- 1.30 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.31 "Local RAR Showing" means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 "LSE" means load-serving entity.
- 1.33 "Marketable Emission Trading Credits" means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.34 "Master Agreement" has the meaning specified in the introductory paragraph.
- 1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36 "Monthly Payment" has the meaning specified in Section 4.1.
- 1.37 "Moody's" means Moody's Investors Services, Inc. or its successor.
- 1.38 "NERC" means the North American Electric Reliability Corporation, or its successor.
- 1.39 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.
- 1.40 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.41 "Non-Availability Charges" has the meaning set forth in the Tariff.
- 1.42 "Non-Specified RA Replacement Capacity" has the meaning set forth in the Tariff.
- 1.43 "Outage" means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.44 "Outage Schedule" has the meaning specified in Section 3.8.
- 1.45 "Planned Outage" shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.

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- 1.46 “Product” has the meaning specified in Section 3.1.
- 1.47 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.48 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.50 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.51 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.52 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.53 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.54 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.55 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.56 “RMR Contract” has the meaning set forth in the Tariff.
- 1.57 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.58 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.59 “Seller” has the meaning specified in the introductory paragraph.
- 1.60 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.61 “Substitution Rules” has the meaning set forth in Section 3.8(b).
- 1.62 “Supply Plan” has the meaning set forth in the Tariff.

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- 1.63 "Tariff" means the tariff and protocol provisions, including any applicable CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.
- 1.64 "Transaction" has the meaning specified in the introductory paragraph.
- 1.65 "Unit" or "Units" shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.66 "Unit Contract Quantity" means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.67 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.68 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.69 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term**2.1 Contract Term**

The "Contract Term" shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties' obligations under this Agreement have been fulfilled.

3. Transaction**3.1 Product**

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes but excluding Flexible RA Attributes (if any)) of the Units identified in Appendix A (collectively, the "Product") and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines

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existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

3.2 Unit Contingent Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for reasons of Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

3.3

[REDACTED]

3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

[REDACTED]

3.5 Delivery of Product

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Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff ("Substitution Rules") and (ii) take, or cause each Unit's

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SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.

- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

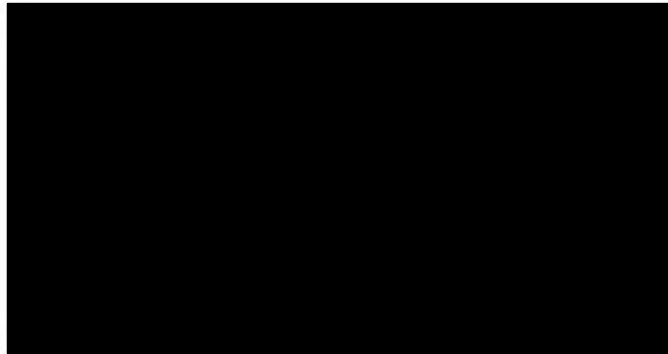
A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity "B" exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity "B" be less than zero.

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***d** = Total number of calendar days in the respective Monthly Delivery Period*

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.



4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.

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- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

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If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

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6. Other Buyer and Seller Covenants**6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product**

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CASIO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the

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relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9. Collateral Requirements

Within one (1) Business Day of the Confirmation Execution Date, to secure its obligations under this Confirmation, Buyer agrees to deliver a Letter of Credit or cash in the amount of eight million eight hundred fifty thousand dollars (\$8,850,000.00) to Seller and maintain such security

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in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Buyer's damages. Seller shall return to Buyer any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Buyer arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

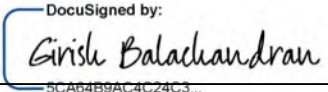
[Signature page follows]

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IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

Silicon Valley Clean Energy Authority
a California joint powers authority

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By:  DocuSigned by:
5CA64B9AC4C24C3...


By:  DocuSigned by:
3A919B9D5C854A0...

Name: Girish Balachandran

Name: Estela de Llanos

Title: CEO

Title: VP Energy Procurement and Sustainability

APPROVED as to legal form  DS

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APPENDIX A

Buyer SCID: LSVCE

Unit Information

Unit Resource Name	Desert Star Energy Center
CAISO Resource ID	MRCHNT_2_PL1X3
Unit SCID	LSDGE
Unit NQC (MW)	349.25
Prorated Percentage of Unit Factor	51.54%
Unit EFC (MW)	N/A
Flexible Category	N/A
Prorated Percentage of Unit Flexible Factor	N/A
Resource Type	Combined Cycle
Resource Category (MMC Bucket 1, 2, 3 or 4)	4
Path 26 (North or South)	South
Local Capacity Area (if any, as of Confirmation Execution Date)	N/A
Unit Contract Quantity (MW) for Flexible RA Attributes	N/A

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Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

Unit Resource Name	Palomar Energy Center
CAISO Resource ID	PALOMR_2_PL1X3
Unit SCID	LSDGE
Unit NQC (MW)	Varies by Month
Prorated Percentage of Unit Factor	Varies by Month
Unit EFC (MW)	N/A
Unit Flex Category	N/A
Prorated Percentage of Unit Flexible Factor	N/A
Resource Type	Natural Gas
Resource Category (MMC Bucket 1, 2, 3 or 4)	4
Path 26 (North or South)	South
Local Capacity Area (if any, as of Confirmation Execution Date)	N/A
Unit Contract Quantity (MW) for Flexible RA Attributes	N/A

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Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

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**LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT**

Resource Adequacy Contract Number: [REDACTED]

This confirmation letter (“Confirmation”) confirms the transaction (the “Transaction”) between San Diego Gas & Electric Company (“Seller”) and Silicon Valley Clean Energy Authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of May 12, 2023 (the “Confirmation Execution Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the “EEI Agreement”) with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the “Master Agreement”). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

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Name: Silicon Valley Clean Energy Authority

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Wire Transfer:
BNK: River City Bank
ABA: 121133416
ACCT: 6042313302

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The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
and Conditions

- ☐ Optional provision in Section 2.4.
If not checked, inapplicable.

Article Four

Remedies for Failure
to Deliver or Receive

- ☒ Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- ☐ Cross Default for Party A:
☐ Party A: N/A_____ Cross Default Amount: N/A_____
☐ Other Entity: N/A_____ Cross Default Amount: N/A_____
- ☐ Cross Default for Party B:
☐ Party B:_____ Cross Default Amount: _____
☐ Other Entity:_____ Cross Default Amount: _____

5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
☐ Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:
☐ _____
☐ Option C (No Setoff)

Article 8

Credit and
Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

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- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
- (e) Guarantor for Party B: N/A
 Guarantee Amount: N/A

8.2 Party B Credit Protection

- (a) Financial Information:
☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____
- (b) Credit Assurances:
☒ Not Applicable
☐ Applicable
- (c) Collateral Threshold:
☒ Not Applicable
☐ Applicable
 If applicable, complete the following:
 Party A Collateral Threshold: \$ _____;
 provided, however, that Party A's Collateral
 Threshold shall be zero if an Event of Default or
 Potential Event of Default with respect to Party A
 has occurred and is continuing.
 Party A Independent Amount: \$ _____
 Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
☒ Not Applicable
☐ Applicable
 If applicable, complete the following:
☐ It shall be a Downgrade Event for Party A if
 Party A 's Credit Rating falls below _____
 from S&P or _____ from Moody's or if Party A
 is not rated by either S&P or Moody's
☐ Other:
 Specify: _____
- (e) Guarantor for Party A: N/A
 Guarantee Amount: N/A

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Article 10

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.**Schedule M**

- ☐ Party A is a Governmental Entity or Public Power System
☒ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.
2. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".
3. In Section 2.1, delete the first sentence in its entirety and replace with the following:

"A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a "Confirmation")."
4. Section 2.3 is deleted in its entirety and replaced with the following:

"2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties."
5. Section 2.4 is hereby amended by deleting the words "either orally or" in the sixth line.
6. Section 10.2(ii) of the Master Agreement shall be modified by inserting "Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation," at the beginning of the first sentence in such section.

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7. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“10.6 THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

8. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day

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- market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed the "Replacement Price" for this Transaction.
- 1.9 "Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit's Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
 - 1.10 "Compliance Showing" means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
 - 1.11 "Confirmation" has the meaning specified in the introductory paragraph.
 - 1.12 "Confirmation Execution Date" has the meaning specified in the introductory paragraph.
 - 1.13 "Contract Price" means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
 - 1.14 "Contract Quantity" means the quantity of Product (in MW) as set forth in Section 3.5.
 - 1.15 "Contract Term" has the meaning set forth in Section 2.1.
 - 1.16 "CPUC" means the California Public Utilities Commission.
 - 1.17 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
 - 1.18 "CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program as provided in the CPUC Decisions.
 - 1.19 "Credit Rating" means, with respect to any entity, the rating assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.
 - 1.20 "Delivery Period" has the meaning specified in Section 3.3.

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- 1.21 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.22 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.23 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.24 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.25 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.26 “GADS” means the Generating Availability Data System, or its successor.
- 1.27 “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.
- 1.28 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.29 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body

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- having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.30 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.31 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.32 “LSE” means load-serving entity.
- 1.33 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.34 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.36 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.37 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.38 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.39 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.40 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.41 “Non-Availability Charges” has the meaning set forth in the Tariff and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes.
- 1.42 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes.
- 1.43 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

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- 1.44 "Outage Schedule" has the meaning specified in Section 3.8.
- 1.45 "Planned Outage" shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.46 "Product" has the meaning specified in Section 3.1.
- 1.47 "Prorated Percentage of Unit Factor" means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.48 "Prorated Percentage of Unit Flexible Factor" means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.50 "RA Substitute Capacity" means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.51 "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.52 "RAR Showing" means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.53 "Replacement Capacity" means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.54 "Replacement Unit" means a generating unit providing Replacement Capacity.
- 1.55 "Resource Category" shall be as described in the CPUC Filing Guide.
- 1.56 "RMR Contract" has the meaning set forth in the Tariff.
- 1.57 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.58 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.
- 1.59 "Seller" has the meaning specified in the introductory paragraph.

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- 1.60 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.61 “Substitution Rules” has the meaning set forth in Section 3.8(b).
- 1.62 “Supply Plan” has the meaning set forth in the Tariff and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes.
- 1.63 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.64 “Transaction” has the meaning specified in the introductory paragraph.
- 1.65 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.66 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.67 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.68 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.69 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.8, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term**2.1 Contract Term**

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

3. Transaction**3.1 Product**

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- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes and Flexible RA Attributes) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.

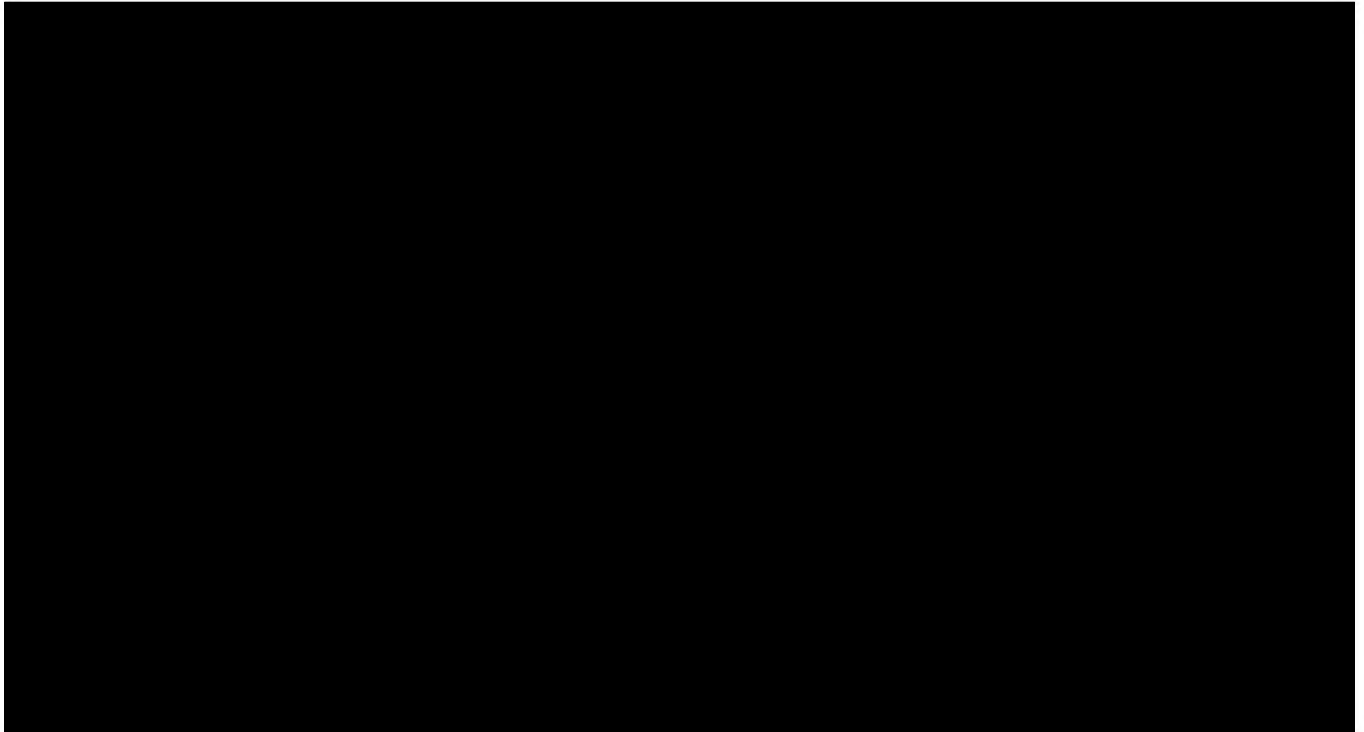
3.2 Unit Contingent Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except for reasons of Planned Outage, Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10.

3.4 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

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3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of

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Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.7 Reserved

3.8 Unit Substitution; RA Replacement Capacity

- (a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "RA Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes ("Substitution Rules") and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.
- (c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.6.
- (d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

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4. Payment**4.1 Monthly Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = \sum_{n=1}^d (A_n * B_n * 1000)$$

where:

A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity "**B**" exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity "**B**" be less than zero.

d = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

**4.2 Reserved.****4.3 Allocation of Other Payments and Costs**

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- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments or Reliability Capacity, or their successor, and Imbalance Reserves or its successor but excluding payments described in Section 4.3(a)(i)-(iv).
- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

Planned Outage replacement shall be addressed by the Tariff. For all other replacements, if Seller is unable to provide the Contract Quantity from any Unit(s) for

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any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

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If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Capacity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CASIO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, "commercially reasonable actions" or "good faith" shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller's Represents, Warrants and Covenants

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Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that

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the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9. Collateral Requirements

Within one (1) Business Day of the Confirmation Execution Date, to secure its obligations under this Confirmation, Buyer agrees to deliver a Letter of Credit or cash in the amount of four million nine hundred seventy thousand two hundred fifty dollars (\$4,970,250.00) to Seller and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Buyer's damages. Seller shall return to Buyer any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Buyer arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the

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Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

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IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

Silicon Valley Clean Energy Authority
a California joint powers authority

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

DocuSigned by:
Girish Balachandran
By: 5CA84B9AC4C24C3

DocuSigned by:
By: Estela de Llanos
3A019B975C854A71

Name: Girish Balachandran

Name: Estela de Llanos

Title: CEO

Title: VP Energy Procurement and Sustainability

APPROVED as to legal form

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APPENDIX A

Buyer SCID: LSVCE

Unit Information

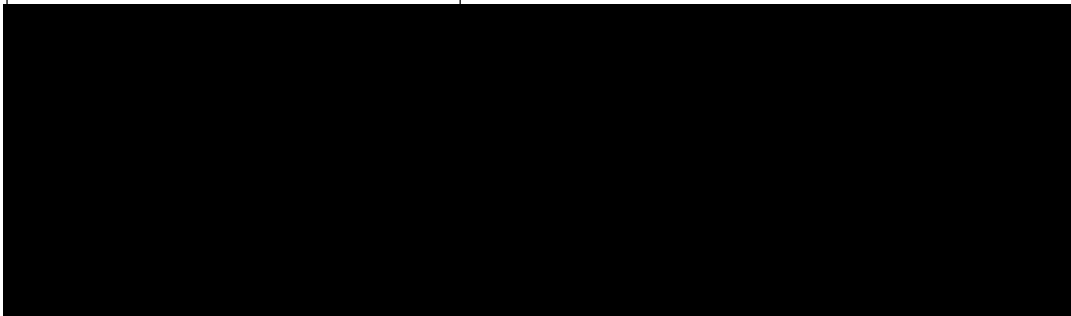
Unit Resource Name	Desert Star Energy Center
CAISO Resource ID	MRCHNT_2_PL1X3
Unit SCID	LSDGE
Unit NQC (MW)	349.25
Prorated Percentage of Unit Factor	6.59%
Unit EFC (MW)	169.25
Flexible Category	1
Prorated Percentage of Unit Flexible Factor	13.59%
Resource Type	Combined Cycle
Resource Category (MMC Bucket 1, 2, 3 or 4)	4
Path 26 (North or South)	South
Local Capacity Area (if any, as of Confirmation Execution Date)	N/A



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Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

Unit Resource Name	Orange Grove Energy Center
CAISO Resource ID	OGROVE_6_PL1X2
Unit SCID	LSDGE
Unit NQC (MW)	Varies by Month
Prorated Percentage of Unit Factor	Varies by Month
Unit EFC (MW)	Varies by Month
Prorated Percentage of Unit Flexible Factor	Varies by Month
Resource Type	Gas Turbine
Resource Category (MMC Bucket 1, 2, 3 or 4)	4
Path 26 (North or South)	South
Local Capacity Area (if any, as of Confirmation Execution Date)	N/A



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Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

NRG Ref. No. 114173511

Confirmation for Bilateral Import Capability Transfer

This confirmation letter ("Confirmation") confirms the transaction between **Direct Energy Business Marketing, LLC** ("Seller"), and **Silicon Valley Clean Energy Authority**, a Pennsylvania limited liability company ("Buyer"), each individually a "Party" and together the "Parties", effective as of May 10, 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 Master Power Purchase & 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 or any successor entity performing the same functions.
- 1.3 "CIRA" has the meaning in Section 3.3.
- 1.4 "CIRA System Failure" means a disruption in transfer of Product caused solely by the CIRA System that is not within the control of, or the result of the negligence of, either Party and which could not have been avoided by the exercise of due diligence.
- 1.5 "Confirmation" has the meaning specified in the introductory paragraph.
- 1.6 "Confirmation Effective Date" has the meaning specified in the introductory paragraph.
- 1.7 "Contract Price" has the meaning set forth in Section 4.2.
- 1.8 "Contract Quantity" has the meaning set forth in Section 3.4.
- 1.9 "CPUC" means the California Public Utilities Commission.
- 1.10 "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.
- 1.11 "Master Agreement" has the meaning specified in the introductory paragraph.
- 1.12 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.13 "Period of Delivery" means the months defined in Section 2.1, inclusive.
- 1.14 "Product" has the meaning specified in Section 3.1.

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- 1.15 “Seller” has the meaning specified in the introductory paragraph.
- 1.16 “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.
- 1.17 “Transaction” has the meaning specified in the introductory paragraph.

2. Term

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.

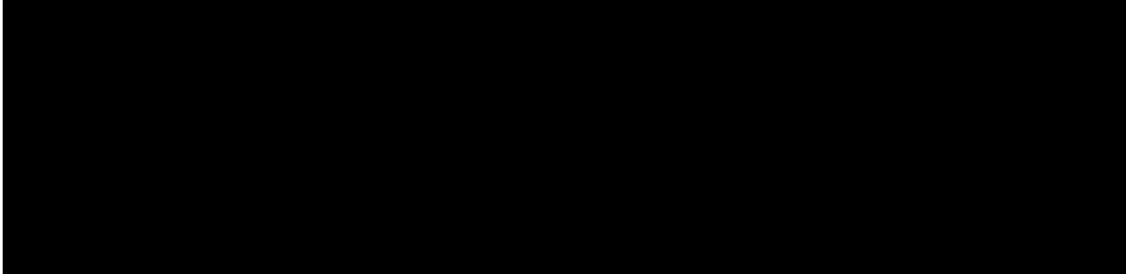
3.3 Performance

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 term 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.

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3.4 Contract Quantity

For the Period of Delivery, Seller shall transfer the Product in the total amount ("Contract Quantity"), as follows:



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:

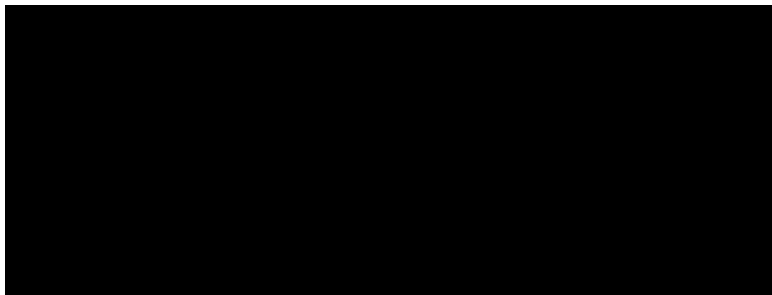
A= Contract Price (in \$/kW-month)

B= Contract Quantity (in MW) transferred by Seller

C= 1000kW/MW

The payment shall be rounded to two decimal places.

4.2 Contract Price



5. CIRA System Failure

- 5.1 If a Party is unable to transfer or receive Product due to a CIRA System Failure, the affected Party shall, within two (2) Business Days from its discovery of the CIRA System Failure, provide the other Party with Notice and full details identifying the cause of the

NRG Ref. No. 114173511

CIRA System Failure. Each Party shall use reasonable efforts to cause transfer or receipt of the Product.

- 5.2 Neither Party's failure to transfer or receive Product due solely to a CIRA System Failure constitutes an Event of Default or failure to deliver Product.

6. 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.

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. 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.

[Signature page follows]

NRG Ref. No. 114173511

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be executed by their authorized representative effective as of the Confirmation Effective Date.

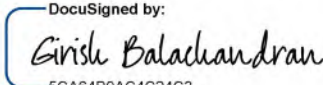
BUYER


SELLER

Silicon Valley Clean Energy Authority,

Direct Energy Business Marketing, LLC

A California joint powers authority

By:  _____
Name: Girish Balachandran
Title: CEO

By:  _____
Name: Jay Robertson
Title: Sr. Director - West Power Trading

**CONFIRMATION LETTER
BETWEEN
MORGAN STANLEY CAPITAL GROUP INC.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the Transaction between Morgan Stanley Capital Group Inc. ("Morgan Stanley" or "Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCE" or "Buyer"), each individually a "Party" and together the "Parties," dated as of May 12, 2023 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the EEI Master Power Purchase and Sale Agreement dated November 23, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the "Master Agreement"), as amended and supplemented by this Confirmation, under the following terms and conditions. The definitions and provisions contained in this Confirmation, the Master Agreement, the RA Rules (as defined herein), and in the tariffs and/or protocols of the California Independent System Operator ("CAISO") as amended from time to time (the "CAISO Tariff" or the "Tariff"), shall apply to this Confirmation and are incorporated by reference; provided that, to the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts. This Confirmation supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction.

**ARTICLE 1
PRODUCT 1**

1.1. Product 1 – Contract Price, Contract Quantity, Delivery Term and Delivery Point

- (a) Product 1: WSPP Agreement Schedule C Firm Energy supplied from the Carbon Free Source (as defined in Exhibit A) ("Carbon Free Firm Energy"). The Product cannot be curtailed by Seller or Buyer for economic reasons.

(b)

(c)

(d)

(e)

(f)

- (g) Contract Price (Product 1): The Contract Price is an aggregation of three components, as further described in Section 1.2(c).
- (h) Passage of Title: Seller represents and warrants that Seller holds the rights to the Product free and clear of all liens and encumbrances, and Seller agrees to convey and hereby conveys all such Product to Buyer free and clear of all liens and encumbrances as included in the delivery of the Product subject to the terms and conditions contained herein. As set forth in Section 10.3 of the Master Agreement, title and reporting rights to the Carbon Free Firm Energy shall pass from Seller to Buyer at the Delivery Point.

(i)

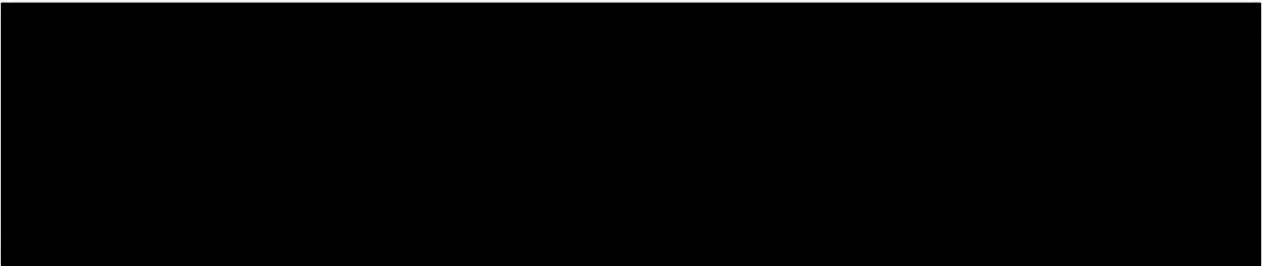
For the purposes of Section 10 of the WSPP Agreement, “firm transmission” means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a “continuous physical transmission path” which shall provide for “direct delivery of electricity” (as such terms are defined in the Cap and Trade Regulations).

- (j) Seller Delivery Obligation. Seller shall deliver Carbon Free Firm Energy in the amount of the Hourly Contract Quantity from Carbon Free Source into the CAISO on behalf of Buyer without substituting electricity from another source, as evidenced by e-Tags, or such other format acceptable to Buyer. Deliveries shall be measured for each hour that the Carbon Free Firm Energy is delivered to the CAISO but shall not exceed the lesser of corresponding amounts shown on the e-Tags or meter data from the Carbon Free Source.
- (k) Reporting Requirements. Seller shall provide Buyer with all necessary documentation required to support and verify that delivery requirements have been met according to the Applicable Program, including but not limited to documentation demonstrating that the Carbon Free Source meets the CARB requirements of a Specified Source Facility and that the Carbon Free Firm Energy is traceable to a specific generating facility.

1.2. Special Conditions – Product 1

- (a) Generally Accepted Utility Practice: All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.
- (b) External Resource: Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.



The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller), not to exceed the Minimum Monthly Delivery Quantity during any calendar month. For greater certainty, the Parties hereby acknowledge and agree that Seller may deliver more than the Minimum Monthly Delivery Quantity hereunder (“Additional Monthly Quantity”) during any calendar month; provided however (A) no Capacity Fee shall be due and payable for any such Additional Monthly Quantity and (B) no Attributes Fee shall be payable for Additional Monthly Quantities in excess of 10,000 MWh. All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

(d) Additional Seller Representations: Seller represents and warrants to Buyer as follows:

- (i) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;
- (ii) as of the Confirmation Effective Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source’s host balancing authority area and is not committed to another balancing authority area (*i.e.* no double-counting);
- (iii) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;
- (iv) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Buyer hereunder has been sold once and only once by Seller;
- (v) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission on the last segment immediately preceding the CAISO balancing authority; and
- (vi) throughout the Delivery Term, Seller’s firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source’s host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.

For greater certainty, Seller’s performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

ARTICLE 2 PRODUCT 2

2.1. Product 2 – Scheduling Coordinator Services

- (a) Seller: Morgan Stanley Capital Group Inc.
- (b) Buyer: SVCE
- (c) Product 2: Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Buyer as Product 1.

2.2. Overview

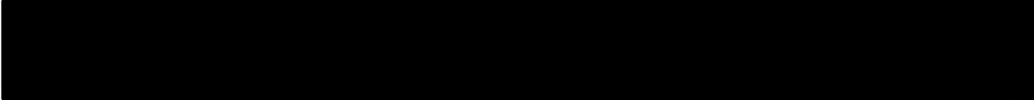
The purpose of Product 2 is for Morgan Stanley to perform the required scheduling coordinator functions for the “resource” (as such term is used by the CPUC in D. 20-06-028, the Carbon Free Firm Energy). Although D.20-06-028 required the Buyer to take responsibility for ensuring that energy associated with an import RA contract is bid into, and delivered to, the CAISO markets, the CPUC’s decision also permitted the Buyer to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Morgan Stanley is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and has the requisite experience, skill and capability to perform the scheduling obligations assumed by it in providing the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Morgan Stanley will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities defined below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Buyer’s Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink as required and contemplated by CPUC D.20-06-028 and the resource adequacy requirements established by CAISO pursuant to the CAISO Tariff.

2.3. Scheduling Coordinator Services

Morgan Stanley agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy purchased by Buyer as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below (“Scheduling Coordinator Services”):

- (a) For each hour in which energy is to be delivered to the Delivery Point, consistent with the Minimum Monthly Delivery Quantity, Morgan Stanley will Bid or Self-Schedule (as such terms are defined in the CAISO Tariff) the Carbon Free Firm Energy into the CAISO Day Ahead Market and Real-Time Market, provided if Morgan Stanley submits Bid(s) (other than Self-Schedule) such Bid(s) for each hour that is an Availability Assessment Hour, Morgan Stanley’s Bid(s) shall be at a price between negative \$150/MWh and \$0/MWh (“Bidding Requirement”) until the Minimum Monthly Delivery Quantity has been met.
- (b) Working with CAISO and Buyer to set up a Resource ID associated with Morgan Stanley’s SCID for purposes of undertaking the services in paragraph (a) above (“RA Resource ID”), which shall be set up as a CAISO system resource;

- (c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;
- (d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:
 - (i) Morgan Stanley's Scheduling Coordinator PSE in the "physical path" at and from the Delivery Point to the Sink,
 - (ii) Buyer's PSE in the "market path" at the Delivery Point,
 - (iii) Buyer's PSE as the last PSE in the "physical path",
 - (iv) 
 - (v) A CAISO Aggregated Pricing Node as the Sink; and
- (e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Exhibit B for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Exhibit B due to changes in Carbon Free Source, CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

2.4.

2.5.

2.6. **Special Conditions – Product 2**

- (a) Resource Adequacy Plan: Buyer shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan ("RA Plan"), as required by the CAISO Tariff, that explicitly identifies the Delivery Profile hours as the temporal constraint/limitation and such RA Plan shall otherwise match the Supply Plan submitted by Morgan Stanley.
- (b) CAISO Acceptance/Rejection: Morgan Stanley shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Morgan Stanley. If, in any hour of the Delivery Term, CAISO rejects the Bid(s) (including Self-

Schedule) submitted by Morgan Stanley in the CAISO Day Ahead Market and Real-Time Market, then

- (i) if Morgan Stanley Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and
 - (ii) if Morgan Stanley does not Bid in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller, no Capacity Fee shall be due for such hour, and, unless Seller is otherwise excused from its delivery obligations, Buyer shall be entitled to such remedies as are provided hereunder and in the Master Agreement.
- (c) Energy Adjustment: For each month of the Delivery Term, and in consideration of Morgan Stanley retaining any and all revenues received as a result of any CAISO awards from the Bid(s) (including or Self-Schedule(s)) submitted by Morgan Stanley (among other things), Morgan Stanley will credit Buyer the Energy Adjustment. “Energy Adjustment” means the LMP Index minus \$2.00/MWh for each MWh of the Carbon Free Firm Energy delivered to Buyer in such month pursuant to this Confirmation.

ARTICLE 3 GENERAL PROVISIONS

3.1 Uncontrollable Force/Force Majeure

The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPF Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:

- (a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Confirmation Effective Date, will be considered Uncontrollable Force and Force Majeure,
- (b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
- (c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Morgan Stanley for any hour(s) of the Delivery Term, subject to Section 1.2(c), Morgan Stanley and Buyer shall be relieved of their obligation to sell and deliver or purchase and receive, respectively,

the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Morgan Stanley shall be relieved of its SC Services obligations for such hour(s), and

- (d) Morgan Stanley will use commercially reasonable efforts to communicate (verbally or electronically in writing, including via eTags) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Morgan Stanley is able to deliver to Buyer during the affected hours.

3.2 Monthly Reporting

The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (e.g. transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bid Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Buyer having delivery visibility through inclusion on all NERC E-Tags, Morgan Stanley will provide a monthly report that includes a lessor of analysis showing eTags, and meter readings from the Carbon Free Source.

3.3 Electricity Importer

As a result of the provision of Scheduling Services, Morgan Stanley will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Morgan Stanley will be responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation.

3.4 Confidentiality

Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 3.5(b), provided such Party shall redact commercial terms (e.g. Contract Price) prior to disclosure or disclose the Confirmation confidentially to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

3.5 RA Requirements / Change in Law

- (a) The Parties acknowledge that Buyer has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Buyer acknowledges that Seller makes no representation or warranty that Product 1 as procured by Buyer will be eligible for or can be used or counted toward Buyer's resource adequacy obligations pursuant to the RA Requirements.
- (b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Buyer's compliance filings to obtain the CPUC's guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Buyer's name.

- (c) It is Buyer's sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and (ii) determine the appropriate maximum cumulative capacity bucket(s).
- (d) If there is a Change in Law that (i) materially adversely changes or affects a Party's obligations hereunder or (ii) results in Buyer being unable to use Product 1 to meet its RA Requirements, the Parties shall work in good faith to try and revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Buyer to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days' written notice from one Party following the Change in Law ("Negotiation Period"), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 3.8, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, provided for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties provided that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

3.6 **Seller Indemnification / Termination**

To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Buyer or other third party contracting directly or indirectly with Buyer, then

- (a) Seller agrees to indemnify Buyer for any monetary penalties directly resulting from Seller's nonperformance hereunder as assessed against Buyer by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Buyer following notice from Seller of its nonperformance; and
- (b) in addition to Buyer's other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Buyer may terminate this Confirmation upon written notice to Seller, provided such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 3.8, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, provided for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no

event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

3.7 Survival

To the extent this Confirmation is terminated by either Party as provided in Section 3.5 or 3.6 and Morgan Stanley, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Morgan Stanley incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For greater certainty, neither Party will make any further binding commitments to CAISO (e.g. no filing of monthly RA Plans or Supply Plans) after the effective date of termination.

3.8 Relationship of the Parties

The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.

[Signatures appear on the following page.]

Acknowledged and agreed to as of the Confirmation Effective Date.

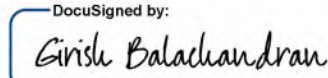
**MORGAN STANLEY CAPITAL GROUP
INC.**

Sign: 

Print: Brent Masucci

Title: Vice President

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

Sign: 
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Print: Girish Balachandran

Title: CEO

EXHIBIT A**CARBON FREE SOURCE**

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the “Carbon Free Source”).

Facility Name	Technology	Location	CARBID	EIA ID
Wanapum Dam	Large hydroelectric	Washington State	500054	3888
Priest Rapids Dam	Large hydroelectric	Washington State	500054	3887
Rock Island Dam	Large hydroelectric	Washington State	500003	6200
Rocky Reach Dam	Large hydroelectric	Washington State	500055	3883
Boundary Dam	Large hydroelectric	Washington State	500043	6433
Lucky Peak Dam	Large hydroelectric	Idaho State	500046	10014
Wells	Large hydroelectric	Washington State	500237	3886
Kerr (Seli's Ksanka Qlispé) Dam	Large hydroelectric	Montana State	500014	2188

EXHIBIT B

SAMPLE NERC E-TAG

Market Path									
PSE	Product	Contract	Misc Info						
MSCG01	G-F		Yes						
LSVCE	L		No						

Physical Path									
BA	TSP	MO	PSE	POR	POD	Sched Entities	Contract	Misc Info	Loss
GCPD			MSCG01	Source: MSCG_GCPD				No	
	BPAT		MSCG01	BPAT.GCPD	BigEddy	BPAT		No	
	BPAT		MSCG01	BigEddy	NOB	BPAT		No	
	CISO	CISO	MSCG01	NOB	SYLMAR	LDWP		No	
	CISO	CISO	MSCG01	SYLMAR	SP15	CISO		Yes	
CISO		CISO	LSVCE	Sink: SP15				No	

Transmission Allocation					
TSP	Owner	Product	OASIS	NITS Resource	Misc Info
BPAT (1)	MSCG01	7-F	10031		No
BPAT (2)	MSCG01	7-F	10031		No
CISO (1)	MSCG01	7-F	MSCG_NOB_I_F_IMS010		No
CISO (2)	MSCG01	7-F	MSCG_NOB_I_F_IMS010		No

EXHIBIT C

DEFINITIONS

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

“AAH” or “Availability Assessment Hours” means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Confirmation Effective Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending (“HE”) 1700 through HE 2100 (5 hours per day), Monday through Saturday (6 days per week).

“Applicable Program” means the Cap and Trade Regulations or the PSD Regulations.

“Buyer”, as used in the Master Agreement, means Buyer.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively).

“CARB” means the California Air Resources Bureau of the California Environmental Protection Agency.

“CAISO Tariff” means the FERC-approved electric tariff of the California Independent System Operator Corporation (“CAISO”) and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

“Change in Law” means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Confirmation Effective Date.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the RA Requirements.

“Federal Holidays” means legal public holidays as set forth in 5 USC § 6103(a).

“Firm Transmission” means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

“Flat” means all Off-Peak and On-Peak hours (24x7).

“Generally Accepted Utility Practice” means a practice established by the Western Electricity Coordinating Council (“WECC”) or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

“Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission (“FERC”) and California Public Utilities Commission (“CPUC”).

“LMP Index” means, for any day of delivery, the day-ahead hourly Locational Marginal Price (“LMP”) at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for NP 15) (“NP 15 Trading Hub”) for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

“MCC Bucket(s)” means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 22-06-050 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 22-06-050). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

“MCC Bucket Category 1” means, as provided in D. 22-06-050, the resource has availability (as defined in the D. 22-06-050) and updated in 2023 CPUC Filing Guide, every Monday through Saturday, for 4 consecutive hours between 4 pm through 9 pm, and at least 100 hours per month from May through December.

“NERC Holiday” means any day designated as a holiday by NERC.

“Off-Peak” means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

“On-Peak” means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

“PSD Regulations” means the Power Source Disclosure Program regulations (California Code of Regulations Title 20, Division 2, Chapter 3, Article 5, Sections 1390 through 1394).

“RA Requirements” means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC’s currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 22-06-050 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

“RA Termination Event” means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, and (ii) such unexcused failure by Seller is likely to cause Buyer to not (or no longer) be able to count Product 1 toward its RA Requirements.

“Scheduling Coordinator” has the meaning given in the CAISO Tariff.

“Self-Schedule” has the meaning given in the CAISO Tariff.

“Sink” means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

“Specified Source Facility” means a power source registered by an electric power entity with CARB that is intended to be claimed in an Emissions Data Report pursuant to section 95111(g)(1) of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions in the state of California.

**MASTER POWER PURCHASE AND SALE AGREEMENT
RESOURCE ADEQUACY CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY (“PARTY A”)
AND
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between Party A and Party B, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25th, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1
TRANSACTION TERMS**

Buyer: Party A

Seller: Party B

Product: The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller’s local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

Delivery Period: August 1, 2023, through August 31, 2023, inclusive.

Contract Quantity and Contract Price: The Contract Quantity and Contract Price for each day of each Showing Month during the Delivery Period shall be set forth in Appendix B.

**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Firm RA Product

Seller’s obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

2.2 Seller To Identify Shown Unit

- (a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit information no later than:

 - (i) Fifteen (15) calendar days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, if the Confirmation Effective Date is at least fifteen (15) calendar days before such Compliance Showing deadline; or
 - (ii) One (1) business day from the Confirmation Effective Date if the Confirmation Effective Date is less than fifteen (15) calendar days from the Compliance Showing. Section 2.3 of this Confirmation does not apply when the Confirmation Effective Date is within fifteen (15) calendar days of the Compliance Showing.
- (b) The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC.
- (c) Seller's notice under this Section 2.2 shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within five (5) Business Days. Provided such Shown Unit meets the requirements of this Confirmation, this second Shown Unit shall be deemed acceptable to and approved by Buyer upon receipt. This section does not apply if the Confirmation Effective Date is within fifteen (15) calendar days of the relevant Compliance Showing deadline.
- (d) Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2(c), then any such Shown Unit will be automatically deemed the Unit from which the Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.3 Seller To Provide Alternate Capacity

- (a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.
- (b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics

specified in Appendix B no later than five (5) calendar days before the relevant deadlines for the submission of Compliance Showings related to the applicable Showing Month. Seller's notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one (1) Business Day of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Alternate Unit. If Buyer timely objects, Seller must identify another Alternate Unit within two (2) Business Days. Provided such Alternate Unit meets the requirements of a Shown Unit under this Confirmation, this second Alternate Unit is deemed acceptable to and approved by Buyer upon receipt.

- (c) Once the Alternate Unit is approved or deemed approved in accordance with Section 2.3(b), then any such Alternate Unit will be automatically deemed the Unit from which Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.4 Delivery of Product

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:
 - (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
 - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit.
 - (iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article 7 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.

2.5 Damages for Failure to Provide Capacity

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

For each applicable day during the Showing Month included in the Delivery Period in which the Buyer's Monthly Payment has been received by Seller in accordance with Section 3.1 of this Confirmation only, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kW per MW.

2.6 Indemnities for Failure to Deliver Contract Quantity

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or CAISO resulting from any of the following:
 - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period and such failure results in the imposition of penalties, fines or costs assessed against Buyer; or
 - (ii) A Unit's Scheduling Coordinator's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

2.7 Buyer's Re-Sale of Product

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the Competitive Solicitation Process. If Buyer re-sells Product, Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights

under this Confirmation. If Buyer incurs any liability to any subsequent purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.5 and 2.6.

- (b) If Buyer exercises its right to re-sell the Product, Buyer shall notify Seller in writing that such sale has occurred by providing to Seller the information described in Appendix C ("Re-sale Plan"). The Re-sale Plan shall be provided no later than three (3) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month, except where Buyer exercises its rights under Article 7, then Buyer shall notify Seller in accordance with deadlines described in Article 7. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, and such notice shall include all updates to the information in Appendix C in accordance with the deadlines described in this Section 2.7(b).

ARTICLE 3 **PAYMENT**

3.1 Monthly Payment

Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

Monthly Payment = $Q \times P \times CF$
where:

- Q = The Contract Quantity of Product to be delivered by Seller to Buyer pursuant to Appendix B and consistent with Section 2.4 for the Showing Month
- P = The Contract Price for the Showing Month, expressed in dollars per kW-month, as stated in Appendix B
- CF = The conversion factor equal to 1,000 kW per MW

The Monthly Payment calculation shall be rounded to two decimal places.

If the Confirmation Effective Date is more than fifteen (15) calendar days prior to the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, payment shall be paid by Buyer and received by Seller no later than fifteen (15) calendar days prior to the deadlines for the corresponding Compliance Showings applicable to the Showing Month. If the Confirmation Effective Date is fifteen (15) calendar days or less from the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, the Monthly Payment shall be made by Buyer and received by Seller no later than five (5) Business days following the Confirmation Effective Date.

3.2 Allocation of Other Payments and Costs

- (a) Seller is entitled to retain any revenues it may receive from, and shall pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a subsequent purchaser of Resold Product fails to remit those revenues to Seller.

If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer.

- (b) Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs. In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale.
- (d) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

ARTICLE 4

CAISO OFFER REQUIREMENTS

Seller is responsible for, as applicable, scheduling or causing the applicable Unit's Scheduling Coordinator to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the

Unit's Scheduling Coordinator (unless Seller is the Scheduling Coordinator), owner, or operator for such noncompliance.

ARTICLE 5

OTHER BUYER AND SELLER COVENANTS

5.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions (including the execution of documents or instruments) reasonably necessary to ensure Buyer's right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.7. The Parties shall make commercially reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations.

5.2 Representations, Warranties and Covenants

- (a) Seller represents and warrants to Buyer throughout the Delivery Period that:
 - (i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
 - (ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
 - (iii) each Unit's Scheduling Coordinator, owner and operator is obligated to comply with applicable laws, including the Tariff, relating to the Product;
 - (iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit; and
 - (v) Seller has notified either the Scheduling Coordinator of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer, or, if applicable, to a subsequent purchaser.
- (b) Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit;
- (c) Seller covenants as follows:
 - (i) Seller shall not offer, and shall ensure that the Unit's Scheduling

Coordinator does not offer, any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall promptly notify Buyer, or shall cause the Unit's Scheduling Coordinator to promptly notify Buyer within one (1) Business Day of the time Seller receives notification from CAISO. If CAISO makes such a designation, Seller shall not accept, and shall ensure that the Unit's Scheduling Coordinator does not accept, any such designation by CAISO unless and until Buyer has agreed to accept such designation; and

- (ii) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 5.2(c)(i) is true and correct
- (d) Each Party covenants to the other Party throughout the Delivery Period to comply with the Tariff, relating to the Product.

5.3 Counterparts

This Confirmation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered by electronic mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) or other transmission method and any other counterpart so delivered shall have the same legal effect as an original.

ARTICLE 6 CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement Review Group, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price.

ARTICLE 7 HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit's Scheduling Coordinator not to list, in the Unit's Supply Plan a

portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period (“Hold-Back Capacity”). Along with such request, Buyer shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Buyer’s request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer’s use as Substitute Capacity only for Planned Outages within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day of the Planned Outage for which Buyer seeks to use such Substitute Capacity as required by the CAISO. The amount of Contract Quantity that is the subject of Buyer’s request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.5 or 2.6. Seller shall, or shall cause the Unit’s Scheduling Coordinator to, comply with Buyer’s request under this Article 7.

Notwithstanding anything to the contrary in Sections 2.6, Seller shall not be liable for any costs, penalties, or fines assessed against Buyer by the CAISO as a result of Seller’s failure to make Substitute Capacity available to Buyer if Buyer did not timely comply with the notification requirements of this Article 7.

ARTICLE 8

COLLATERAL REQUIREMENTS

8.1 Party A Collateral Requirements

- (a) Notwithstanding anything to the contrary contained in the Master Agreement, Party A shall, within five (5) Business Days following the Confirmation Effective Date, provide to, and maintain with, Party B a Fixed Independent Amount as long as Party A or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and Baa3 from Moody’s. The “Fixed Independent Amount” shall be 20% of the sum of the Monthly Payments for all unpaid months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Section 8.2 of the Master Agreement, entitled “Party B Credit Protection”, and all corresponding provisions to Section 8.2 of the Master Agreement, such Fixed Independent Amount for Party A shall be added to the Exposure Amount for Party B and subtracted from the Exposure Amount for Party A.
- (b) If the conditions in subsections (i) and (ii) of this Section 8.1(b) are satisfied throughout the Delivery Period, then this Confirmation’s Fixed Independent Amount shall not apply for that time period during which all such conditions are satisfied:
 - (i) Party A’s customers are PG&E’s distribution or transmission customers and PG&E is the billing agent for those customers; and
 - (ii) PG&E is the provider of last resort pursuant to Cal. Pub. Util. Code Section 451 et seq. and applicable law for Party A’s retail electric customers.

- (c) If at any time during the Delivery Period, one or more of the conditions in subsections (i) and (ii) of Section 8.1(b) is no longer satisfied, and Party B has provided Party A with written notice of such failure to satisfy (Condition Notice), then Party A shall comply with the credit requirements of Section 8.1(a), above by that date which is no later than thirty (30) calendar days following the date of the Condition Notice.

8.2 Party B Collateral Requirements

Section 8.1 of the Master Agreement, entitled “Party A Credit Protection”, and all corresponding provisions to Section 8.1 of the Master Agreement do not apply to this Confirmation.

8.3 Current Mark-to-Market Value

For the purposes of calculating Exposure pursuant to the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction, consequently affecting each Party's Exposure.

ARTICLE 9

ADDITIONAL MASTER AGREEMENT AMENDMENTS

9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

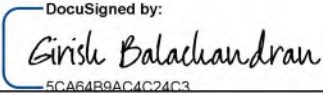
The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation and with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the Master Agreement:

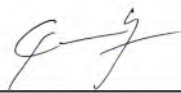
“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

Silicon Valley Clean Energy Authority, a California joint powers authority

Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

By: 
Name: Girish Balachandran
Title: CEO
Date: 5/23/2023

By: 
Name: Fesseha Lakew
Title: Portfolio Management, Senior
Date: 5/24/2023

APPENDIX A **DEFINED TERMS**

For purposes of this Confirmation, the following terms have the following meanings:

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing substantially the same functions.

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

- (a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;
- (b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

“FERC” means the Federal Energy Regulatory Commission.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

“FCR Contract Quantity” means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include “market participants” as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

“Hold-Back Capacity” is defined in Article 7 of this Confirmation.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means “Load Serving Entity” as such term is defined in the Tariff. “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1 of this Confirmation.

“MW” means megawatt.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Effective Date.

“Substitute Capacity” means “RA Substitute Capacity” as defined in the Tariff.

“System RAR” means the system resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

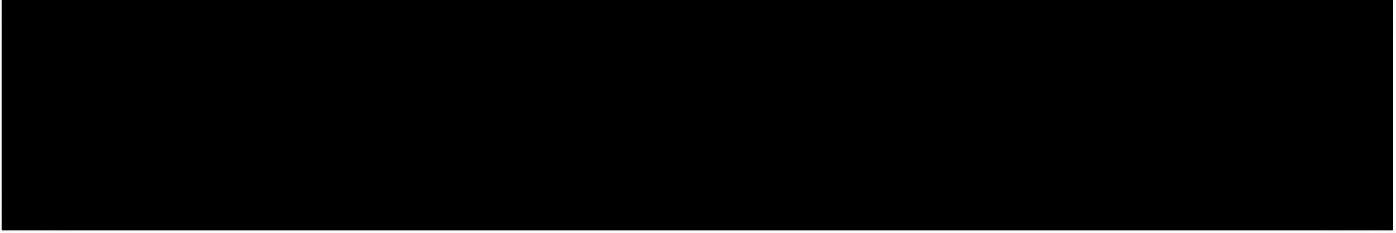
“Unit” means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

“Unit EFC” means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

“Unit NQC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

APPENDIX B
PRODUCT AND PRICE INFORMATION

Product means Capacity Attributes with the following characteristics.

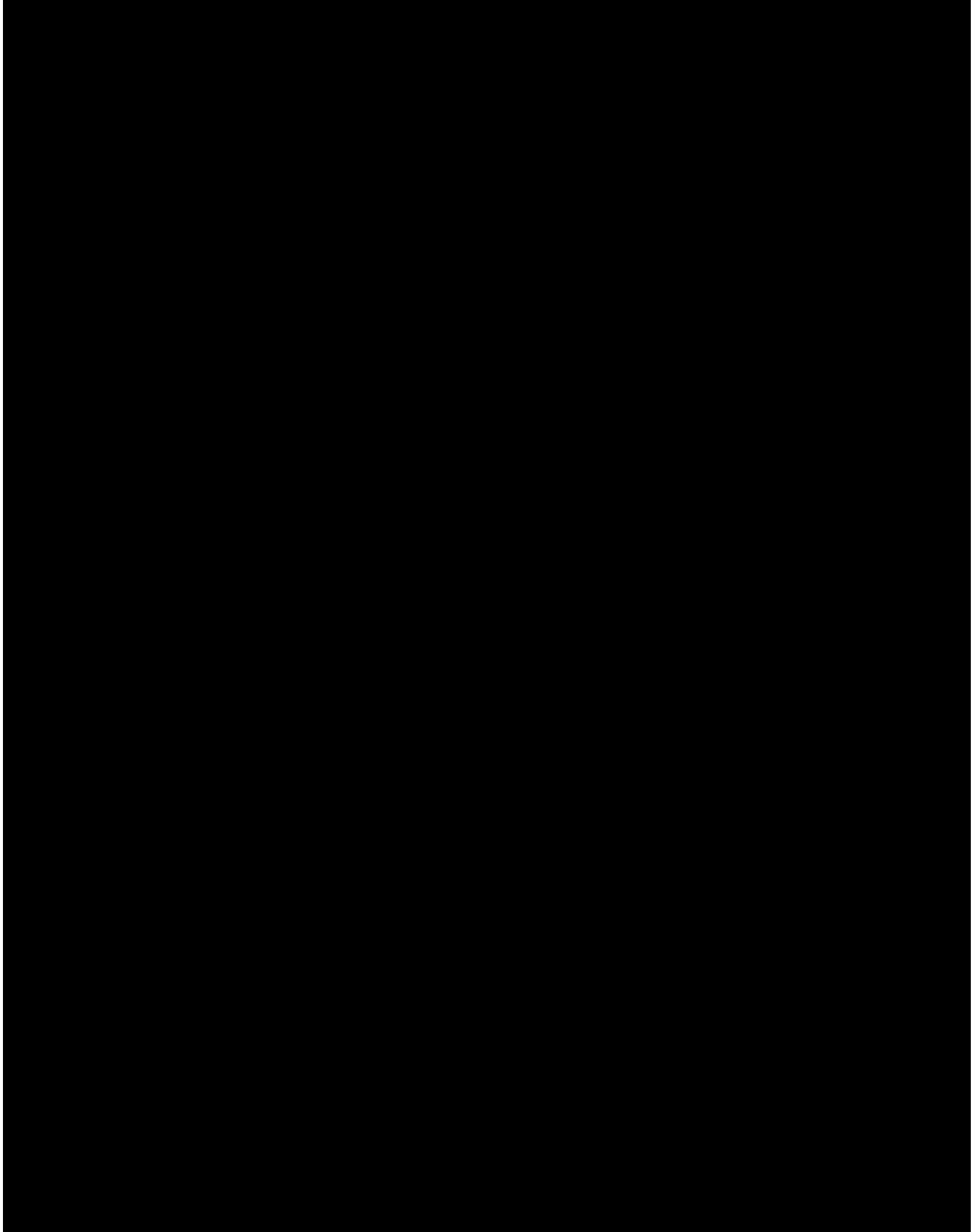


* Please specify: System, Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura, or PG&E Other. PG&E Other means capacity coming from any combination of resources in the Humboldt, Sierra, Stockton, Fresno, Kern, and/or North Coast/North Bay Local Areas.

APPENDIX C
SUBSEQUENT SALE INFORMATION

Contract Key ID:	
Benefitting LSE SCID:	
Generic Volume (in MW):	
Local Volume (in MW and by local area):	
Flexible Volume (in MW):	
Term:	

APPENDIX D
NOTICE INFORMATION



APPENDIX E
FORM OF LETTER OF CREDIT
Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [Insert issue date]

Beneficiary: [Insert Beneficiary name]
 [Insert Beneficiary address]

Applicant: [Insert Applicant name]
 [Insert Applicant address]

Letter of Credit Amount: [Insert amount]

Expiry Date: [Insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** ("Applicant"), we hereby issue in favor of **[Insert name of Beneficiary]** (the "Beneficiary") our irrevocable standby letter of credit No. **[Insert number of letter of credit]** ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** ("Letter of Credit Amount"). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents (which may be presented by physical delivery or by facsimile, e-mail or other electronic transmission):

1. Beneficiary's signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. "The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the "Draft Amount") is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary's counterparty under the RA Confirmation]** ("Counterparty") under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert date of the Confirmation]** between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number]**;" or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount; and
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made by presentation of copies or original documents, or by facsimile, e-mail, or other electronic transmission of documents to [Insert fax number, email or other electronic transmission], Attention: [Insert name of bank's receiving department] or [Insert e-mail or other electronic transmission address]. If a demand is made by facsimile, e-mail or other electronic transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at [Insert phone number(s)] to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The electronic copy of this Letter of Credit shall be the operative instrument until such time as the original is received. This Letter of credit can be amended or terminated by facsimile, e-mail or other electronic transmission.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

[INSERT NAME OF ISSUING BANK]

By: _____

Name: **[Print or type name]**

Title: **[Print or type title]**

EXHIBIT A
SIGHT DRAFT

TO:
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S. \$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO.
[XXXXXX].

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER:

By: _____
Name: [Print or type name]
Title: [Print or type title]