

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

svcleanenergy.org

333 W El Camino Real Suite 330 Sunnyvale, CA 94087

Silicon Valley Clean Energy Authority Board of Directors Meeting

Wednesday, August 9, 2023 7:00 pm

Cupertino Community Hall 10350 Torre Avenue Cupertino, CA 95014

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

> 16870 Prospect Ave. Thousand Island Park, NY 13692

Teleconference Meeting Webinar:

https://cityofcupertino.zoom.us/j/94295848572

Telephone (Audio Only): US: +1 669-900-6833 Webinar ID: 942 9584 8572

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.

Page 1 of 3



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333 W El Camino Real Suite 330 Sunnyvale, CA 94087 If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA") please contact Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org prior to the meeting for assistance.

AGENDA

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda

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

Consent Calendar (Action)

- 1a) Approve Minutes of the June 14, 2023, Board of Directors Meeting
- 1b) Approve Minutes of the June 14, 2023, Board of Directors Special Meeting
- 1c) Receive May and June 2023 Treasurer Report
- 1d) Ratify Broker Transaction Expenses for Past Commodity Purchases
- 1e) Adopt Resolution to Approve the Amended Energy Risk Management Policy
- 1f) Authorize the Chief Executive Officer to Modify Agreement with Power MC LLC
- 1g) Adopt Resolution Authorizing the Chief Executive Officer to Amend Master Agreement with Direct Energy Business Marketing, LLC
- 1h) Receive Q2 2023 Decarbonization Programs Update
- 1i) Executive Committee Report
- 1j) Finance and Administration Committee Report
- 1k) California Community Power Report



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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 11) Legislative Response to Industry Transition 2023 Ad Hoc Committee Report

1m) Audit Committee Report

Regular Calendar

- 2) CEO Report (Discussion)
- 3) Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase Agreement with Grace Orchard Solar II, LLC for Renewable Solar PV Supply (PCC1) and a 15-Year Energy Storage Service Agreement with Yellow Pine Solar III, LLC for Energy Storage, in Substantial Form and Any Necessary Ancillary Agreements and Documents (Action)
- 4) Provide Feedback on the FY 2023-24 Proposed Operating Budget and Updated Reserves Policy (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Public Comment on Closed Session

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

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(California Government Code Section 54956.9(d)(1))

Name of case: Central Coast Community Energy, a California joint powers authority; Silicon Valley Clean Energy Authority, a California joint powers authority v. Big Beau Solar, LLC, et al, Santa Clara County Superior Court Case

No. 22CV398156

svcleanenergy.org

333 W El Camino Real Suite 330 Sunnyvale, CA 94087

<u>Adjourn</u>



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

DRAFT MEETING MINUTES

Call to Order:

Chair Tyson called the meeting to order at 7:02 p.m.

Roll Call

Present:

George Tyson (Chair), Los Altos Hills
Tina Walia (Vice Chair), Saratoga
Elliot Scozzola, Campbell
Sheila Mohan, Cupertino
Zachary Hilton, Gilroy (Participated via teleconference)
Sally Meadows, Los Altos
Rob Rennie, Los Gatos
Evelyn Chua, Milpitas
Bryan Mekechuk, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill (Participated via teleconference)
Margaret Abe-Koga, Mountain View
Larry Klein, Sunnyvale
Otto Lee, Santa Clara County

Absent:

None.

Public Comment on Matters Not Listed on the Agenda

Bruce Karney, on behalf of Carbon Free Mountain View and Carbon Free Silicon Valley, recognized Director Martinez Beltran as a member of the "Five-Timers Club", an acknowledgement for directors who have served five years on the SVCE board. Mr. Karney noted the certificate would be sent to Director Martinez Beltran by SVCE staff.

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 May 10, 2023, Board of Directors Meeting
- 1b) Receive April 2023 Treasurer Report
- 1c) Approve Additional Funding of \$250,000 for eHub Resources for a Not to Exceed Amount of \$1.1M
- 1d) Authorize the Chief Executive Officer to Execute a Three-Year Agreement with the Sacramento Municipal Utility District (SMUD) for Electrification Concierge Consultant Services
- 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
- 1f) Adopt a Resolution Authorizing the Chief Executive Officer to Execute Master Agreement with Citadel Energy Marketing LLC
- 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
- 1h) Authorize the Chief Executive Officer to Execute an Amendment to the 2022-2023 Climate Corps Fellowship Agreement with Strategic Energy Innovations
- 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
- 1j) Executive Committee Report
- 1k) Finance and Administration Committee Report
- 11) California Community Power Report
- 1m) Additional Committee Reports

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

The motion carried unanimously by verbal roll call vote.

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran's report included the following:

- 1) Summer readiness, and how SVCE is preparing for the heat in the summer months;
- 2) Upcoming publishing of high-level GHG metrics for each city;
- 3) Introduction of SVCE's two newest members:
 Juliette Pascual, Community Outreach Specialist, and
 Karen Chang, Manager of Finance and Risk Controls

Both provided brief welcome comments;

- 4) An announcement of the departure of two SVCE employees, Charles Grinstead, Sr. Manager of Power Resources, and Kevin Armstrong, Deputy Director of Administrative Services. Deputy Director of Administrative Services Armstrong was present and thanked board members for their work in the organization and community.
- 5) A recap of the Casa Diablo-IV binary geothermal plant tour with staff and board members that occurred June 9, 2023 in Mammoth Lakes, CA.

Director Rennie and Mekechuk shared their experience in attending the geothermal power plant tour; Vice Chair Walia welcomed Juliette and Karen.

Chair Tyson opened Public Comment. No speakers. Chair Tyson closed Public Comment.

3) SVCE Strategic Plan FY 24 Update (Discussion)

CEO Balachandran presented an update on the FY 24 SVCE Strategic Plan, which included information on the planning and budgeting process, and proposed five strategic Focus Areas for FY24:

- Expand Clean and Reliable Grid Actions
- Expand Customer Base & Interaction
- Accelerate Building & Transportation Electrification
- Implement Innovative Financing Solutions
- Attract & Retain Employees

Staff responded to questions and comments from board members on the strategic focus areas.

Chair Tyson opened Public Comment.

Colin Corbett had the following comments: 1) How will there be innovative programs when currently the programs do not pay out; 2) Suggestion of a report that shows success rate vs. refusal rate vs. deferment rate sorted by rebate programs, which may give people more confidence, 3) Homes are not getting hooked up fast enough because the incentives that are there do not pay out, 4) How will you expand your advocacy when most of the interactions as a rebate seeker are usually negative, 5) As SVCE looks to interact more with commercial customers, they will expect contracts with defined milestones and termination clauses so he would suggest SVCE adjust their rebates based upon a higher percentage of having to pay out, and 6) for storage, there is a significant lack of choices and the complexity is significant.

Chair Tyson closed Public Comment.

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

Amrit Singh, CFO and Director of Administrative Services, presented information on the stress test analyses which included an overview of the Enterprise Risk Management framework, construction of the stress test scenario, an overview of modeled price collapse, the results and implied reserve targets, and next steps.

CFO and Director of Administrative Services Singh responded to board member questions regarding the new illustrative reserve targets, a potential collapse in prices, and processes in price distribution building.

Chair Tyson opened Public Comment. No speakers. Chair Tyson closed Public Comment.

5) FY 2023-24 Budget Framework (Discussion)

CFO and Director of Administrative Services Singh presented information on the budget framework including revenue modeling, reserve targets, customer discount rate, additional funding for programs and set aside for reserves, power supply costs, and other cost drivers (building purchase).

CFO and Director of Administrative Services Singh responded to board member questions including one regarding the AB 205 trailer bill and longer-term potential rate decreases from PG&E.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment.

Board Member Announcements and Future Agenda Items

Vice Chair Walia announced she had the opportunity to attend the Silicon Valley Leadership Group's 2023 Energy & Sustainability Summit on June 8, 2023 and enjoyed the speakers who included Jennifer Granholm, US Department of Energy Secretary, and Michael Raegan, US Environmental Protection Agency Administrator.

Director Martinez Beltran thanked Carbon Free Mountain View for their recognition of her five years of service on the SVCE board.

Public Comment on Closed Session

No speakers.

The Board of Directors convened to Closed Session at 8:46 p.m.

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

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

Adjourn

Chair Tyson adjourned the meeting at 9:37 p.m.

ATTEST:	
Andrea Pizano, Board Secretary	_



Silicon Valley Clean Energy Authority Board of Directors Special Meeting

Wednesday, June 14, 2023 5:30 pm

Cupertino Community Hall 10350 Torre Avenue Cupertino, CA

DRAFT MEETING MINUTES

Call to Order:

Chair Tyson called the meeting to order at 5:39 p.m.

Roll Call

Present:

Directors:

George Tyson (Chair), Los Altos Hills Tina Walia (Vice Chair), Saratoga Elliot Scozzola, Campbell Sheila Mohan, Cupertino Sally Meadows, Los Altos Rob Rennie, Los Gatos Evelyn Chua, Milpitas Bryan Mekechuk, Monte Sereno Larry Klein, Sunnyvale

Alternate Directors:

Hung Wei, Cupertino Lisa Schmidt, Los Altos Hills Pat Showalter, Mountain View

Absent:

Directors:

Zachary Hilton, Gilroy Yvonne Martinez Beltran, Morgan Hill Margaret Abe-Koga, Mountain View Otto Lee, Santa Clara County

Alternate Directors:

Sergio Lopez, Campbell Rebeca Armendariz, Gilroy Pete Dailey, Los Altos Rob Moore, Los Gatos Carmen Montano, Milpitas Burton Craig, Monte Sereno Tanya Carothers, Morgan Hill Chuck Page, Saratoga Sylvia Arenas, Santa Clara County Murali Srinivasan, Sunnyvale

Public Comment on Matters Not Listed on the Agenda

No speakers.

Regular Calendar

1) Study Session: Clean Power Standards and Reporting

Monica Padilla, COO and Director of Power Resources, and Maren Wenzel, Senior Manager of Policy & Regulatory Analysis presented the study session information on clean power standards and reporting which included information on how SVCE functions in the CAISO market, regulatory mechanisms, where SVCE is today, information on the power content label, SVCE's product offering and challenges, clean standard pathways, information on a mechanism that matches supply with expected retail demand every hour of the day (24x7), Google's CFE methodology, and next steps for SVCE.

Staff responded to questions from board members regarding small modular reactors, SVCE's product offerings, incorporating a potential rare event when modeling (extreme weather related), 24x7 modeling, the future challenge of being affordable while also being clean and reliable, the demand for carbon-free resources, if there is any upcoming legislation on clean accounting, information on geothermal and reliability, and development of a pathway study and if any other agencies have conducted similar studies.

Chair Tyson opened Public Comment.

Bruce Karney identified a mathematical error on slide 10 and addressed a report that he develops, "How Green, How Cheap", which is distributed to CCA advocates and staff. Mr. Karney noted SVCE and PCE are two of the cleanest CCAs, and commented because of a change in measurement reporting methodology, progress in meeting each City's greenhouse gas goals may appear to go backward.

Chair Tyson closed Public Comment.

Board Member Announcements and Future Agenda Items None.

Adjourn

Chair Tyson adjourned the meeting at 6:42 p.m.

ATTEST:	
Andrea Pizano, Board Secretary	



TREASURER REPORT

Fiscal Year to Date As of June 30, 2023

(Preliminary & Unaudited)

Issue Date: August 9, 2023

Table of Contents

	<u>Page</u>
Summary	2-3
Statement of Net Position	4
Statement of Revenues, Expenses & Changes in Net Position	5
Statement of Cash Flows	6-7
Actuals to Budget Report	8-10
Monthly Change in Net Position	11
Investments Report	12
Customer Accounts	13
Accounts Receivable Aging Report	13

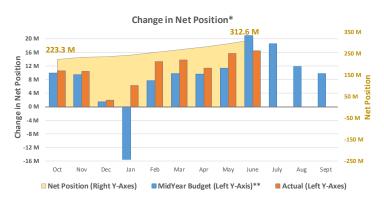
Financial Statement Highlights* (\$ in millions)

June 30, 2023

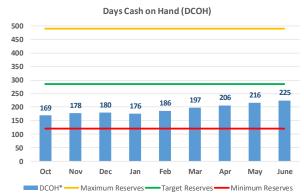
Balance Sheet Highlights:

Page 1

- > SVCE operations resulted in a change in net position of \$16.4 million for the month of June and \$99.9 million for fiscal-year-to-date (FYTD).*
- > Total Net Position increased further to \$312.6 M
- > SVCE is investing ~94% of available funds generating FYTD interest/dividend income of \$5 million.



^{*}Does not yet recognize unspent program dollars



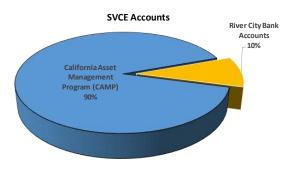
*Adjusted to reflect Mid-year budget adjustments and additional program funding

SVCE Yield-bearing Accounts:

Combined Ending Balance	254.2 M
Total Interest/Div. Earned FYTD	4.9 M
Average Return On Investments	5.0%

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

^{**} Average annualized Yield for the current month



Investment Income*



 ${}^* \text{Includes investment income from SVCE Yield-bearing accounts plus interest on cash collateral} \\$

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

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

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

Page 2

- > FYTD operating margin of \$111.1 million or ~32% is above amended budget expectations of 24% operating margin for the fiscal year to date.
- > FYTD Power Supply costs are -11% below mid-year budget.
- > Retail GWh sales for the month and FYTD landed -13% and -0.1% below budget respectively.

Variance Explanation:

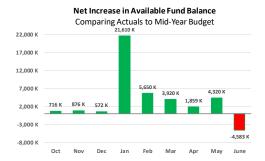
January - the variance mainly reflects a big drop in prices from December 22 to January 23 resulting in \$21.5M net power cost savings comparing to MY Budget estimations March - mainly reflects stronger revenues due to higher than

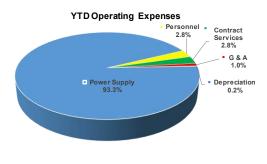
anticipated customer load

February, April & May- mainly reflects the below budget net

power supply cost and saving in all categories of other operating expenses.

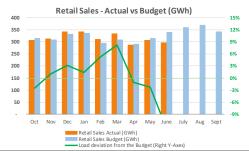
June - lower than estimated customer load due to below historic-average temperatures.

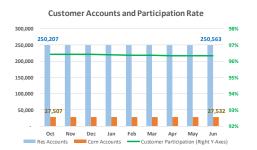




		June			Fiscal YTD		
\$ in thousands	Actual	Budget	% Dif	Actual	Budget	% Dif	Main Drivers:
Revenue	45.9 M	53.9 M	-15.0%	348.5 M	353.1 M	-1.3%	14% lower than budgeted customer load for the month of June
Power Supply Cost	28.2 M	30.5 M	-7.7%	237.4 M	267.2 M	-11.2%	Lower net open position and environmental costs compared to the mid-year budget. This is driven largely by forward prices
Operating Margin	17.7 M	23.4 M	-24.4%	111.1 M	85.8 M	29.5%	used for the mid-year budget. Prices have decreased significantly.
Operating Expenses (ex Power)	1.9 M	2.4 M	-20.8%	14.9 M	20.7 M	-28.3%	Staffing vacancies, underrunning professional services, and lower marketing expenses
Other Non-Op. Expen. (Income)	-1.0 M	-0.4 M	176.2%	111.1 M	85.8 M	29.5%	Reflects higher Interest Income
Net Increase in Available Fund	40.014		04.40/			405 40/	
Balance	16.8 M	21.4 M	-21.4%	68.2 M	33.2 M	105.1%	

Customer Load Statistics:





Total Accounts	278,095
Opt-Out Accounts (Month)	42
Opt-Out Accounts (FYTD)	740
Opt-Up Accounts (Month)	(3)
Opt-Up Accounts (FYTD)	(23)

Program Funds:

	- 1	Beginning Balance	End Balance	YTD Contributions	YTD Expenditures
General Program Fund	\$	28,536,229	\$ 48,039,994	\$ 21,165,000	\$ 1,661,235
CRCR Fund*	\$	7,982,993	\$ 9,189,832	\$ 3,600,000	\$ 2,393,161
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.

STATEMENT OF NET POSITION As of June 30, 2023

ASSETS

ASSETS	
Current Assets	
Cash & Cash Equivalents	\$ 271,233,191
Accounts Receivable, net of allowance	34,174,337
Accrued Revenue	32,100,348
Energy settlements receivable	840,467
Other Receivables	165,750
Prepaid Expenses	3,613,493
Deposits	26,892,325
Restricted cash	 163,234
Total Current Assets	369,183,145
Noncurrent assets	
Capital assets, net of depreciation	437,767
Lease asset, net of amortization	963,000
Deposits	45,130
Total Noncurrent Assets	 1,445,897
Total Assets	370,629,042
LIABILITIES	
Current Liabilities	
Accounts Payable	979,575
Accrued Cost of Electricity	38,349,926
Other accrued liabilities	1,157,901
User Taxes and Energy Surcharges due to other gov'ts	1,395,733
Supplier securit deposits	8,051,250
Lease liability	 501,963
Total Current Liabilities	50,436,348
Noncurrent Liabilities	
Supplier security deposits	7,100,000
Lease liability	533,768
Total noncurrent liabilities	7,633,768
Total Liabilities	58,070,116
NET POSITION	
Net investment in capital assets	365,036
Restricted for security collateral	163,234
Unrestricted (deficit)	 312,030,656
Total Net Position	\$ 312,558,926

STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION October 1, 2022 through June 30, 2023

OPERATING REVENU	UES	
------------------	-----	--

Electricity Sales, Net	\$346,938,483
GreenPrime electricity premium	1,092,567
Liquidated damages	1,134,600
Other income	35,656
TOTAL OPERATING REVENUES	349,201,306
OPERATING EXPENSES	
Cost of Electricity	237,406,102
Contract services	7,640,221
Staff compensation and benefits	7,053,940
Other operating expenses	2,452,786
Depreciation	461,545
TOTAL OPERATING EXPENSES	255,014,594
OPERATING INCOME(LOSS)	94,186,712
NONOPERATING REVENUES (EXPENSES)	
Grant income	716,553
Interest Income	4,993,407
Financing costs	(21,268)
TOTAL NONOPERATING REVENUES (EXPENSES)	5,688,692
CHANGE IN NET POSITION	99,875,404
Net Position at beginning of period	212,683,522
Net Position at end of period	\$312,558,926

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

CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from customers	\$368,712,203
Receipts from liquidated damages	1,134,600
Other operating receipts	27,539,496
Payments to suppliers for electricity	(274,970,276)
Payments for other goods and services	(11,193,033)
Payments for staff compensation and benefits	(6,974,479)
Tax and surcharge payments to other governments	(6,215,473)
Net cash provided (used) by operating activities	98,033,038
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES	
Grant revenue received	716,553
Finance costs paid	(1,905)
Net cash provided (used) by financing activities	714,648
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES	
Acquisition of capital assets	(180,441)
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest income received	4,993,407
Net change in cash and cash equivalents	103,560,652
Cash and cash equivalents at beginning of year	167,835,773
Cash and cash equivalents at end of period	<u>\$271,396,425</u>
Reconciliation to the Statement of Net Position	
Cash and cash equivalents (unrestricted)	\$271,233,191
Restricted cash	163,234
Cash and cash equivalents	\$271,396,425

STATEMENT OF CASH FLOWS (Continued) October 1, 2022 through June 30, 2023

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

Operating Income (loss)	\$	94,186,712
Adjustments to reconcile operating income to net cash provided (used) by operating activities		
Depreciation expense		461,545
(Increase) decrease in net accounts receivable		21,488,884
(Increase) decrease in other receivables		(84,036)
(Increase) decrease in accrued revenue		(6,591,650)
(Increase) decrease in energy settlements receivable		(840,467)
(Increase) decrease in prepaid expenses		(2,635,565)
(Increase) decrease in current deposits		(6,327,003)
Increase (decrease) in accounts payable		(28,233)
Increase (decrease) in accrued cost of electricity		2,382,614
Increase (decrease) in accrued liabilities		(313,949)
Increase (decrease) in energy settlements payable		(87,550)
Increase (decrease) in taxes and surcharges due to other governments		(298,264)
Increase (decrease) in supplier security deposits	_	(3,280,000)
Net cash provided (used) by operating activities	<u>\$</u>	98,033,038

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

	FYTD	FYTD	Variance		FY 2022-23	FY 2022-23 `
OPERATING REVENUES	<u>Actual</u>	<u>Budget</u>	\$	<u>%</u>	<u>Budget</u>	Remaining Budget
Energy Sales	\$346,248,448	\$352,215,288	-\$5,966,840	-2%	\$522,853,000	\$176,604,552
Green Prime Premium	1,092,567	813,132	\$279,435	34%	1,055,000	(37,567)
Liquidated damages	1,134,600	-	\$1,134,600	n/a	-	(1,134,600)
Other Income	35,656	37,500	(1,844)	-5%	50,000	14,344
TOTAL OPERATING REVENUES	348,511,271	353,065,920	(4,554,649)	-1%	523,958,000	175,446,729
ENERGY EXPENSES						
Power Supply	237,406,102	267,237,958	(29,831,856)	-11%	392,436,000	155,029,898
Operating Margin	111,105,169	85,827,962	25,277,207	29%	131,522,000	20,416,831
	31.9%	24.3%				
OPERATING EXPENSES	01.070	21.070				
Data Management	2,395,097	2,559,375	(164,278)	-6%	3,413,000	1,017,903
PG&E Fees	883,988	1,102,500	(218,512)	-20%	1,470,000	586,012
Salaries & Benefits	7,053,940	8,463,660	(1,409,720)	-17%	11,285,000	4,231,060
Professional Services	2,337,064	6,080,944	(3,743,880)	-62%	8,016,000	5,678,936
Marketing & Promotions	562,653	648,805	(86,152)	-13%	862,000	299,347
Notifications	69,478	98,438	(28,960)	-29%	131,000	61,522
Lease	388,303	393,750	(5,447)	-1%	525,000	136,697
General & Administrative	1,186,391	1,392,851	(206,460)	-15%	1,857,000	670,609
TOTAL OPERATING EXPENSES	14,876,914	20,740,323	(5,863,409)	-28%	27,559,000	12,682,086
OPERATING INCOME/(LOSS)	96,228,255	65,087,639	31,140,616	48%	103,963,000	7,734,745
NON-OPERATING REVENUES						
Investment Income	4,993,407	2,569,836	2,423,571	94%	3,870,000	(1,123,407)
TOTAL NON-OPERATING REVENUES	4,993,407	2,569,836	2,423,571	94%	3,870,000	(1,123,407)
NON-OPERATING EXPENSES						
Financing	1,905	2,250	(345)	-15%	3,000	1,095
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	180,442	150,000	30,442	20%	200,000	19,558
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	-
Transfer from CRCR Fund - customer bill relief	(1,406,588)	<u> </u>	(1,406,588)	n/a	<u> </u>	1,406,588
TOTAL OTHER USES	33,038,854	34,415,000	(1,376,146)	-4%	34,465,000	1,426,146
NET INCREASE(DECREASE) IN AVAILABLE						
FUND BALANCE	\$68,180,903	\$33,240,225	\$34,940,678	105%	\$73,365,000	

SILICON VALLEY CLEAN ENERGY AUTHORITY PROGRAM FUND

BUDGETARY COMPARISON SCHEDULE October 1, 2022 through June 30, 2023

·		.,	• • • • • •	J UU, _U_U			
					BU	DPTED DGET	ACTUAL/ ADOPTED
REVENUE & OTHER SOURCES:		<u>BUDGET</u>		<u>ACTUAL</u>	REM	AINING	BUDGET
Transfers in - General Programs	\$	9,765,000	\$	9,765,000	\$	-	100.0%
Transfers in - Nuclear Allocation	\$	1,900,000	\$	1,900,000	\$	-	100.0%
Transfers in - Multi-Family DI	\$	9,500,000	\$	9,500,000	\$		100.0%
Total	\$	21,165,000	\$	21,165,000	\$	-	
EXPENDITURES & OTHER USES:							
Program expenditures*		15,007,082		1,661,235	13	3,345,847	11.1%
Net increase (decrease) in fund balance	\$	6,157,918		\$19,503,765			
Fund balance at beginning of period	<u></u>			28,536,229			
Fund balance at end of period				\$48,039,994			

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

REVENUE & OTHER SOURCES: Transfer from Operating Fund	\$	BUDGET 3,600,000	\$	ACTUAL 3,600,000	BUI	OPTED DGET <u>Aining</u> -	ACTUAL/ ADOPTED BUDGET 100.0%
EXPENDITURES & OTHER USES:							
Customer bill relief credit		3,600,000		1,406,588	2	,193,412	39.1%
Other program expenditures		3,119,875		986,573	2	,133,302	31.6%
Total Program expenditures		6,719,875		2,393,161	4	,326,714	
Net increase (decrease) in fund balance	\$	(3,119,875)		1,206,839			
Fund balance at beginning of period	-		-	7,982,993	-		
Fund balance at end of period				\$9,189,832			

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

REVENUE & OTHER SOURCES:	<u>BUDGET</u>	<u>ACTUAL</u>	ADOPTED BUDGET REMAINING	ACTUAL/ ADOPTED <u>BUDGET</u>
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 Fund balance at beginning of period Fund balance at end of period	\$ 9,400,000	9,500,000 - \$9,500,000		

OPERATING FUND BUDGET RECONCILIATION TO STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION October 1, 2022 through June 30, 2023

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$	68,180,903
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position		
Subtract depreciation expense		(461,545)
Subract program expense not in operating budget		(2,647,808)
Add back GASB 87 expenses not in operating budget		358,412
Add back transfer to Program fund	•	34,265,000
Add back capital asset acquisition		180,442
Change in Net Position		99,875,404

SILICON VALLEY CLEAN ENERGY AUTHORITY STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION October 1, 2022 through June 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	\$ 33,407,866	\$ 37,591,795	\$ 44,585,837				\$346,938,483
Green electricity premium	133,572	123,147	130,539	120,693	101,229	127,670	107,631	116,789	131,297				1,092,567
Liquidated damages	-	-	-	-	-	-	-	-	1,134,600				1,134,600
Other Income	2,250	15,255	-	2,250	5,651	2,750	1,000	3,500	3,000				35,656
Total operating revenues	35,418,846	33,735,061	39,886,655	42,443,874	40,256,176	40,377,379	33,516,497	37,712,084	45,854,734				- 349,201,306
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	20,825,057	28,176,368				237,406,102
Staff compensation and benefits	656,536	673,219	792,543	742,292	723,137	787,636	861,508	945,539	871,530				7,053,940
Data manager	265,853	265,687	265,535	265,615	266,006	266,325	266,110	266,680	267,286				2,395,097
Service fees - PG&E	98,200	98,021	98,152	98,182	98,159	98,157	98,346	98,412	98,359				883,988
Consultants and other professional fees	410,507	374,917	575,873	298,921	372,763	700,446	514,729	561,112	551,868				4,361,136
Other operating expenses	200,337	182,040	881,981	206,710	(17,169)	220,350	210,747	167,925	399,865				2,452,786
Depreciation	50,510	50,510	50,449	50,397	50,866	50,927	51,428	53,208	53,250				461,545
Total operating expenses	24,900,321	23,463,887	38,029,486	37,496,235	27,505,904	27,400,233	22,882,069	22,917,933	30,418,526	-			- 255,014,594
Operating income (loss)	10,518,525	10,271,174	1,857,169	4,947,639	12,750,272	12,977,146	10,634,428	14,794,151	15,436,208	-	-	-	94,186,712
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	960,822	989,361				4,993,407
Financing costs	(2,428)	(2,359)	,	(2,251)	(2,152)	(2,083)	,	(2,078)	(1,884)				(21,268)
Total nonoperating revenues (expenses)	89,031	109,011	168,913	1,263,365	544,833	742,851	824,467	958,744	987,477	-			- 5,688,692
OUANGE IN NET POOITION	A 40 007 FF0	* 40 000 405	* • • • • • • • • • • • • • • • • • • •	* • • • • • • • • • • • • • • • • • • •	* 40 005 405	* 40 740 007	* 44 450 005	* 45 750 005	* 40 400 005	^	_		A 00 075 404
CHANGE IN NET POSITION	\$ 10,607,556	\$ 10,380,185	\$ 2,026,082	\$ 6,211,004	\$ 13,295,105	\$ 13,719,997	\$ 11,458,895	\$ 15,752,895	\$ 16,423,685	> -	» -	ъ -	\$ 99,875,404

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

Ending Balance of SVCE Accounts:		<u>Oct</u>	Nov	Dec	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	Aug	9	Sep
River City Bank Accounts	\$ 20	08,116,692	\$ 221,541,600	\$ 227,161,983	\$ 70,193,52	4 \$ 66,497,950	\$ 45,850,620	\$ 23,833,640	\$ 43,723,703	\$ 26,483,735 \$	-	\$ -	\$	-
California Asset Management Program (CAMP)	\$	-	\$ -	\$ -	\$ 140,486,84	8 \$ 140,996,992	\$ 177,721,225	\$ 216,512,539	\$ 209,946,658	\$ 244,922,370 \$	-	\$ -	\$	-
PFM Asset Management Investment Portfolio	\$	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ - \$	-	\$ -	\$	-
Total Ending Balance	\$ 20	08.116.692	\$ 221.541.600	\$ 227,161,983	\$ 210,680,37	2 \$ 207,494,943	\$ 223,571,844	\$ 240.346.179	\$ 253,670,362	\$ 271,406,105 \$	-	\$ -	\$	-

Return On Investments:

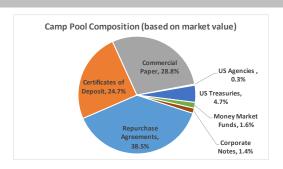
Annual % Yield	<u>Oct</u>	Nov	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>
River City Bank Accounts	0.50%	0.58%	0.85%	1.07%	1.44%	2.39%	2.77%	2.85%	2.97%			
California Asset Management Program (CAMP)	0.00%	0.00%	0.00%	4.53%	4.73%	4.80%	4.97%	5.16%	5.24%			
PFM Asset Management Investment Portfolio	0.00%	0.00%	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%	4.76%	5.02%			

Interest Earned	<u>Oct</u>	Nov	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>A</u>	ug	Se	ер
River City Bank Accounts	\$ 67,811 \$	86,193 \$	139,716 \$	54,891 \$	36,841 \$	13,057 \$	24,386 \$	15,153 \$	13,649 \$	-	\$	-	\$	-
California Asset Management Program (CAMP)	\$ - \$	- \$	- \$	486,848 \$	510,145 \$	724,233 \$	791,314 \$	934,120 \$	975,711 \$	-	\$	-	\$	-
PFM Asset Management Investment Portfolio	\$ - \$	- \$	- \$	- \$	- \$	- \$	- \$	- \$	- \$	-	\$	-	\$	-
Total Interest/Div. Earned	\$ 67,811 \$	86,193 \$	139,716 \$	541,738 \$	546,985 \$	737,290 \$	815,701 \$	949,273 \$	989,361 \$	-	\$	-	\$	-

CAMP Portfolio Statistics

As of June 30, 2023

AS 01 June 30, 2023	
Beginning of the Month Market Value	\$ 209,946,658
Ending of The Month Market Value	\$ 244,922,370
Yield at Market	5.24%
Weighted Average Maturity (days)	26



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	306	297				2,835
Retail Sales Budget (GWh)	315	308	331	336	295	309	290	313	340	358	369	342	2,838
Load deviation from the Budget (F	-2.5%	1.1%	3.1%	1.3%	5.3%	8.2%	-1.1%	-2.3%	-12.7%				-0.1%
Customer Participation Rate Res	96.4%	96.4%	96.4%	96.4%	96.3%	96.3%	96.3%	96.3%	96.3%				
Customer Participation Rate Com	96.7%	96.7%	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	278,120	278,095				
Opt-Out Accounts	74	62	99	126	137	69	77	54	42				740
Opt-Up Accounts	-3	4	-6	-36	8	24	-7	-4	-3				-23

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	\$7.2 M



CAPP funds.

• An additional \$717K in
CAPP funding provided in
Winter 2023.

Green arrow indicates

receipt of \$1.3M in Federal

 Growth at red arrow indicates short-term PG&E billing-hold issue in Fall 2022 that was quickly resolved.





Staff Report - Item 1d

Item 1d: Ratify Broker Transaction Expenses for Past Commodity Purchases

From: Girish Balachandran, CEO

Prepared by: Zakary Liske, Senior Manager of Power Operations

Monica Padilla, COO and Director of Power Resources

Date: 8/9/2023

RECOMMENDATION

Approval of Resolution No. 2023-12 ratifying broker expenses with Tullett Prebon, Equus Energy Group, and Karbone Inc. ("Brokers") for past commodity transactions, in an amount totaling \$390,024.55.

BACKGROUND

In order to effectively procure energy, resource adequacy and environmental attributes, SVCE has engaged various commodity brokers to facilitate transactions over the past four years. Each broker charges fees to facilitate the transactions, sometimes billing SVCE separately, and sometimes wrapped into the full commodity transaction cost.

To date, SVCE has incurred the following amounts with various Brokers:

Fees Paid	Fiscal Year					
Vendor	2019	2020	2021	2022	2023	Grand Total
EQUUS ENERGY						
GROUP			\$3,123.12	\$18,808.48	\$1,496.25	\$23,427.85
KARBONE INC.	\$12,125.00	\$7,000.00				\$19,125.00
TULLETT PREBON				\$53,406.00	\$294,065.70	\$347,471.70
Grand Total	\$12,125.00	\$7,000.00	\$3,123.12	\$72,214.48	\$295,561.95	\$390,024.55

During recent discussions with general counsel around these broker-facilitated transactions, staff were advised that these prior payments to Brokers, when considered in aggregate, exceeded of the authority granted to the CEO through the Purchasing and Energy Risk Management policies.

ANALYSIS & DISCUSSION

During these discussions, General Counsel directed staff to notify the Executive Committee and Board of these breaches of policy. As the broker charges detailed in this item were known and agreed to by staff and the CEO at the respective times of the transactions but were not correctly accounted for in aggregate and presented to the Board for authorization, staff requests that the Board ratify these past expenses and certify their validity for SVCE's records. On June 23, 2023, the Executive Committee recommended a resolution to be put on the Board of Directors Consent Calendar for the August 9, 2023 meeting. Between the Executive Committee meeting and Board of Directors meeting, several additional broker expenses were recognized to raise the total requested ratification from \$357,515.55 to \$390,024.55, which is reflected in the attached resolution.

In order to avoid future breaches of policy and clarify the cost of broker-facilitated commodity transactions, staff is also bringing to the Board in August updates to the Energy Risk Management Policy to clarify CEO

Agenda Item: 1d Agenda Date: 8/9/2023

authority to execute broker-facilitated commodity transactions and pay any associated broker fees up to a specified not-to-exceed dollar limit per broker per fiscal year.

STRATEGIC PLAN

The proposal supports SVCE's 2022-2023 Strategic Plan Goal 18, to "Commit to maintaining a strong financial position", by recognizing actual expenses incurred and improving project oversight processes.

ALTERNATIVE

The Board may elect to not ratify the broker transactions exposing SVCE to operational risk. No other alternatives are known.

FISCAL IMPACT

This action will have no financial impact, as funds have already been paid to Brokers to facilitate commodity transactions.

ATTACHMENTS

1. Resolution No. 2023-12 Approving Broker Expenses for Equus Energy Group, Karbone Inc., And Tullett Prebon and Ratifying All Prior Actions Taken In Connection Therewith

RESOLUTION NO. 2023-12

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING BROKER EXPENSES FOR EQUUS ENERGY GROUP, KARBONE INC., AND TULLETT PREBON AND RATIFYING ALL PRIOR ACTIONS TAKEN IN CONNECTION THEREWITH

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 order to effectively procure energy, resource adequacy and environmental attributes, SVCE has engaged various commodity brokers to facilitate transactions over the past four years, with each broker charging fees to facilitate the transactions, sometimes billing SVCE separately, and sometimes wrapped into the full commodity transaction cost;

WHEREAS, SVCE has incurred the following fees with the following brokers, over the last four years: Equus Energy Group in the amount of \$23,427.85, Karbone Inc. in the amount of \$19,125.00, and Tullett Prebon in the amount of \$347,471.70 (collectively, the "Broker Expenses"); and

WHEREAS, to the extent that the Broker Expenses exceed the Chief Executive Officer's authority, the Executive Committee has recommended that the Board approve such Broker Expenses and ratify all actions taken in connection with such Broker Expenses.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

<u>Section 1</u>. The Board hereby approves the Broker Expenses and ratifies all actions previously taken in connection with such Broker Expenses.

ADOPTED AND APPROVED this 9th day of August 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:		
Clerk		



Staff Report - Item 1e

Item 1e: Adopt Resolution to Approve the Amended Energy Risk Management Policy

From: Girish Balachandran, CEO

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

Karthik Rajan, Senior Risk Manager

Date: 8/9/2023

RECOMMENDATION

Staff recommends that the Board adopt Resolution 2023-13 approving revisions to SVCE's Energy Risk Management (ERM) Policy.

COMMITTEE RECOMMENDATIONS

The Executive Committee reviewed the changes to the ERM Policy at its June 26, 2023, meeting. The Committee asked clarifying questions about the proposed revisions and after discussion with Staff voted unanimously to recommend that the Board approve the revised Policy. Subsequent to the Executive Committee and based on Committee member recommendations to account for both existing transactions and potential brokered transactions in the future, SVCE staff revised the delegation of authority to the CEO for brokered transactions from \$300K per broker per fiscal year to \$500K per broker per fiscal year.

BACKGROUND

The purpose of the ERM Policy is to set the framework for managing market and credit risks associated with the energy procurement activities. The ERM Policy designates responsibility for risk identification, measurement, management, and reporting. It establishes the framework to ensure risks are appropriately managed and that SVCE achieves its mission and adheres to policies established by the SVCE Board of Directors.

The ERM Policy (Policy) requires that it be reviewed and updated as needed at least every two calendar years. The last formal review of the policy occurred on November 10, 2021.

ANALYSIS & DISCUSSION

SVCE staff found that the current Policy is comprehensive but recommends the following changes to further strengthen risk management controls, clarify existing policy, and reflect current energy procurement activities.

Section 6.1 - Trader Authorization Process

Change: Add requirement that trading personnel must sign the trader integrity attestation.

Justification: To reduce operational risks and streamline process for acknowledgement of policy, conflict of

interest and trader integrity attestation. New trading personnel would attest prior to trading while current employees would sign the acknowledgement once every two years or with major

updates to the policy, whichever is earlier.

Agenda Item: 1e Agenda Date: 8/9/2023

Section 6.3 - Approved Transactions

Change: Refine the list of products to reflect current market conditions and SVCE hedging needs to

include board-approved natural gas tolling deals.

Justification: Existing ERM Policy allows for tolling agreements. However, it is not explicit for gas tolling

agreements and natural gas hedging transactions to manage the risk from the underlying gas

position.

Section 6.3 - Approved Transactions

Change: Clarify the definition of allowed transactions to include both physical gas hedges and financially

settled gas hedges needed to manage gas price risk from any board-approval natural gas

tolling transactions.

Justification: Natural gas hedges are often financially settled transactions.

Section 6.5.2 - Authority Delegated to the CEO by the Board -

Change: Update the delegation to include natural gas purchases needed to manage risks from board-

approved gas tolls

Justification: Enable the execution of natural gas hedges.

Section 6.5.2 - Authority Delegated to the CEO by the Board -

Change: Include the authority delegated to the CEO by the board for brokered transactions

Justification: SVCE needs to engage with brokers to enter into energy transactions especially for Resource

Adequacy (RA) products which are often difficult to find given the tight RA market. Broker fees are often interwoven with energy product negotiations and are better addressed in this policy than in the Purchasing Policy (FP6). The fees for brokered transactions can exceed the \$100k/ fiscal year

allowed in the purchasing policy.

Section 6.5.4 - Limits of Authority Delegated to Authorized Personnel by the CEO

Change: Notional value limits are inclusive of broker fees

Justification: Broker fees are often combined with the payment for energy transactions.

<u>Section 8 - Appendix A - Conflict of Interest to "Acknowledgement of ERM Policy, Declaration of Conflict of Interest and Trader Integrity Attestation"</u>

Change: Consolidating policy acknowledgement, conflict of interest and trader integrity attestation into

one document

Justification: Streamlining the process for authorized personnel acknowledgements.

STRATEGIC PLAN

The Policy supports the goals of the Board adopted Strategic Plan. Specifically, the Policy strongly supports:

- Acquire clean and reliable electricity in a cost effective, equitable, and sustainable manner.
- Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives.

Agenda Item: 1e Agenda Date: 8/9/2023

ALTERNATIVE

N/A

FISCAL IMPACT

Implementing the proposed updates to the Policy is not expected to have a fiscal impact.

ATTACHMENTS

- 1. Resolution 2023-13 Approving Revised Energy Risk Management Policy
- 2. Energy Risk Management Policy (Clean- No Redline)
- 3. Energy Risk Management Policy (Redline)

RESOLUTION NO. 2023-13

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY'S ENERGY RISK MANAGEMENT POLICY

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

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

WHEREAS, launch of service for Phase I occurred in April 2017, and launch of service for the remaining Phases occurred in July 2017;

WHEREAS, SVCE first adopted an Energy Risk Management Policy in February 2017, which allowed SVCE to transact in the California Independent System Operator (CAISO) congestion market;

WHEREAS, On May 10, 2017, the Board approved an updated and expanded Energy Risk Management Policy ("Policy") to incorporate other provisions to address key issues such as trading authority, credit risk and hedging;

WHEREAS, On January 9, 2019, the Board approved further revisions to the Policy to clarify the purpose of the Policy, simplify the document by eliminating operational items, and provide clear delegation of authority within the Policy;

WHEREAS, by Resolution No. 2019-03 the Board delegated the authority to the CEO to execute confirmation agreements pursuant to Board-approved Master Agreements with several electricity suppliers, including (a) granting the Chief Executive Officer ("CEO") authority to enter into confirmations for terms not greater than 60 months and (b) limiting the CEO's transaction authority to purchases of product consistent with forecasted load and within the Energy Net Open Position Tolerance Bands as defined in the Policy and further directed by that Policy;

WHEREAS, by Resolution No. 2019-08 the Board delegated authority to the CEO to execute a Cost-Sharing And Reimbursement Agreement ("Cost Sharing Agreement") between five community choice aggregators (CCAs) including SVCE, Peninsula Clean Energy Authority, the City of San Jose, East Bay Community Energy Authority and Monterey Bay Community Power Authority; and to execute an Addendum for Resource Adequacy (RA) Services with the Alliance for Cooperative Energy Services Power Marketing LLC (ACES). Under the Cost Sharing Agreement and ACES Addendum, the five CCAs will receive aggregated resource adequacy management, procurement and regulatory compliance services in an effort to improve buying power and better meet California's RA compliance requirements;

Resolution 2023-13 -1-

WHEREAS, On June 12, 2019, the Board approved further revisions to the Policy to clarify authority delegated to the CEO under Board-approved Master Agreements, to delegate expanded authority to the CEO to transact RA products with non-Master Agreement counterparties for up to 60 months and to limit CEO's authority to set a maximum term limit for final delivery from date of execution;

WHEREAS, On November 10, 2021, the Board approved further revisions to the Policy to update hedging tolerance bands, clarify portfolio management objectives, enhance reporting exceptions to compliance with Policy, add requirements to conduct stress tests, streamline the Resource Adequacy board delegation section, add requirements for staff to acknowledge Policy and declare conflict of interest;

WHEREAS, Staff has provided to the Board, and the Board has reviewed, the attached revisions to the Policy that further strengthen risk management controls, clarify existing policy and, updates it for current energy procurement activities;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

<u>Section 1</u>. The Board hereby amends the Energy Risk Management Policy as provided for in Exhibit A.

ADOPTED AND APPROVED this 9th day of August 2023, by the following vote:

		43.4			
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				

oity of Suffryvale	Director Klein			
		Chair		
ATTEST:				
 Secretary				
Resolution 2023-13		-2-		

Energy Risk Management Policy



Adopted: August 9,2023

Table of Contents

Contents

1•	Gene	eral Provisions	3
	1.1•	Background and Purpose of Policy	
	1.2•	Scope of Business and Related Market Risks	
	1.3•	Policy Administration	
	1.4•	Policy Distribution	
	1.5•	Acknowledgement of ERM	
2•	Risk	Management Goals	
		nition of Market Risks	
	3.1•	Mark-to-Market Risk	
	3.2•	Market Price Risk	
	3.3•	Net Revenue Risk	
	3.4•	Counterparty Credit and Performance Risk	
	3.5•	Load and Generation Volumetric Risk	
	3.6•	Operational Risk	
	3.7•	Liquidity Risk	
	3.8•	Regulatory/Legislative Risk	
4•		rnal Control Principles	
	4.1•	Segregation of duties	
	4.2•	Additional Internal Controls	
5•	Risk	Management Business Practices 1	0
	5.1•	Risk Measurement Metrics and Reporting 1	
	5.2•	Mark-to-Market Risk	
	5.3•	Market Price Risk	
	5.4•	Net Revenue Risk	
	5.5•	Counterparty Credit and Performance Risk	2
	5.6•	Load and Generation Volumetric Risk	
	5.7•	Operational Risk	
	5.8•	Liquidity Risk	
	5.9•	Regulatory/Legislative Risk	
		Reporting	
6•		norized Transaction and Trading Limitations	
	6.1•	Trader Authorization Process	
	6.2•	Approved Markets	
	6.3•	Approved Transactions	
	6.4•	Tolerance Bands	
		Authorized Trading Limits 1	
	6.5.2		
	6.5.2		
	6.5.3	, ,	
	6.5.4	, , , , , , , , , , , , , , , , , , , ,	
		onflict of Interest	
7•		Management Policy Governance	
	7.1•	SVCE Board of Directors	
	7.2•	Risk Oversight Committee	
	7.3•	Internal Risk Oversight Committee	
8•			9

1 General Provisions

1.1 Background and Purpose of Policy

Silicon Valley Clean Energy's (SVCE) mission is to reduce dependence on fossil fuels by providing carbon free, affordable, and reliable electricity and innovative programs for the SVCE community.

This Energy Risk Management Policy (Policy) has been developed to help ensure that SVCE achieves its mission and adheres to policies established by the SVCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations. SVCE is not engaged in the power supply business for profit and is, therefore, precluded by this Policy from engaging in many of the risk-taking activities typical to an organization orientated solely toward profit maximization.

This Policy defines SVCE's general energy risk management framework and provides management with the authority to establish processes for monitoring, measuring, reporting, and controlling market and credit risks to which SVCE is exposed in its normal course of business.

1.2 Scope of Business and Related Market Risks

SVCE provides energy to retail customers in its service territory that entails business activities such as; bilateral purchases and sales of electricity under short-, medium- and long-term contracts; scheduling of load and generation of electricity into California Independent Systems Operator (CAISO) markets; retail marketing of electricity to consumers within its service territory; compliance with voluntary objectives and regulatory requirements as it relates to carbon free and renewable portfolio standard (RPS) compliant energy; participation in CAISO Congestion Revenue Rights ("CRRs") market; managing the balance of load and generation over short, medium and long term horizons; and compliance with California Public Utilities Commission (CPUC) Resource Adequacy (RA) requirements.

Examples of energy market risks include, but are not limited to, the following:

- Mark-to-Market Risk
- Market Price Risk
- Net Revenue Risk
- Counterparty Credit and Performance Risk
- Load and Generation Volumetric Risk
- Operational Risk
- · Liquidity Risk
- Regulatory/Legislative Risk

This Policy focuses on the following:

- Risk Management Goals and Principles
- Definitions of Risks
- Internal Control Principles
- Risk Management Business Practices
- Authorized Transaction and Trading Limitations
- Risk Management Governance

This Policy does not address the following types of general business risk, which are treated separately in other official policies, ordinances, and regulations of SVCE: fire, accident and casualty; health, safety, and workers' compensation; cybersecurity, general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to energy market risks as herein defined, and not those other categories of risk.

1.3 Policy Administration

This Energy Risk Management Policy (Policy) is adopted by the SVCE Board of Directors and will be reviewed and updated as needed at least every two calendar years by SVCE's Board. The CEO is responsible for implementation of the Policy. The CEO is also responsible to develop Energy Risk Management Guidelines (Guidelines), which is required for staff to implement the Policy.

1.4 Policy Distribution

This Policy shall be distributed to all SVCE employees and third-party contractors who are engaged in the planning, procurement, sale and scheduling of electricity on SVCE's behalf and/or in other SVCE departments providing oversight and support for these activities.

1.5 Acknowledgement of ERM

All SVCE staff participating in any activity or transaction within the scope of the ERM shall sign, upon joining or upon any material revision of the ERM policy, that such SVCE representative has:

Read the ERM;

Understands the terms and agreements of said ERM;

Will comply with said ERM;

SVCE employees who are within the scope of the ERM understand that any violation of said ERM may subject the employee to discipline up to and including termination of employment;

2 Risk Management Goals

Although SVCE does not engage in risk-taking activities typical in a for-profit organization, certain risks are incidental to the normal power supply operations and hedging activities. SVCE's policy is to manage risk inherent with serving load, including the risks associated with normal cost-hedging activities, those associated with participation in wholesale markets in general and the CAISO in particular.

The goals of energy risk management shall be to:

- 1.• assist in achieving the business objectives in the Strategic Plan, Integrated Resource Plan (IRP) and Cash Reserve Policy including retail rate stability and competitiveness and the accumulation of financial reserves;
- 2.• avoid losses and excessive costs which would materially impact the financial condition of SVCE;
- 3.• establish the parameters for energy procurement and sales activity to obtain the best possible price while ensuring compliance with Board-approved policies;
- 4.• identify specific cost, regulatory and legislative risks that could adversely affect SVCE's ability to achieve its business objectives, and to the extent possible, quantify and measure performance against those risks;

- 5.• assist in assuring that market activities and transactions are undertaken in compliance with established procurement authorities, applicable laws, regulations and orders;
- 6.• encourage the development and maintenance of a corporate culture at SVCE in which the proper balance is struck between control and facilitation and in which professionalism, discipline, technical skills and analytical rigor come together to achieve SVCE objectives; and
- 7.• manage business risks to acceptable levels consistent with retail rate-setting, resource procurement and cash reserve management.

SVCE manages its energy resources and transactions to provide its customers with low-cost renewable, carbon free and other energy while at the same time minimizing risks. The risk management principles that SVCE will use include:

- 1.• Undue exposure to CAISO or bilateral energy market volatility for the purpose of potentially achieving lower costs but at the risk that costs may, in fact, be much higher, will not be accepted.
- 2.• Procurement and hedging strategy will be determined by analytical methods supplemented by experienced judgement. SVCE will use that experienced judgement and its analytical tools to assess system cost drivers such as weather, short term energy prices, load variation and operational constraints to manage timing and quantity of purchases and sales of energy and related services, consistent with the limits identified in this Policy.
- 3.• When actions are taken that are consistent with this Policy and for the combined goal of low costs and optimized risk, those actions are considered to be consistent with the objectives of this Policy.
- 4.• SVCE will not engage in transactions, without proper authorization, whose purpose is not tied to managing costs and risks or are outside of the limits identified in this Policy.

3 Definition of Market Risks

The term "market risks," as used here, refers specifically to those categories of risk which relate to SVCE's participation in wholesale and retail markets as a Load Serving Entity (LSE) and its interests in long-term contracts. Market risks include market price risk, counterparty credit and performance risk, load and generation volumetric risk, operational risk, liquidity risk, and regulatory and legislative risk. These categories are defined and explained as follows.

3.1 Mark-to-Market Risk

Mark-to-Market risk is the risk that wholesale trading positions, long-term supply contracts and generation resources may move "out of the money," that is, become less valuable in comparison with similar positions, contracts, or resources obtainable at present prices. These same positions can also be "in the money" if they become more valuable in comparison to similar positions, contracts, or resources obtainable at present market prices. This valuation methodology is commonly referred to as "Mark-to-Market." If SVCE is "out of the money" on a substantial portion of its contracts, it may have to charge higher retail rates. This may erode SVCE's competitive position and market share if other market participants (e.g., Direct Access providers or PG&E) are able to procure power at a lower cost and offer lower retail electricity rates.

3.2 Market Price Risk

Market Price risk is the risk that market prices change, resulting in changes to energy

5

procurement cost. For example, the cost for the unhedged portion of a supply portfolio (net open position) will increase when market prices increase. Conversely, if resources are in excess to needs and market prices fall, the revenue expected from the sale of the surplus resources will decrease. In addition, uncertain market price relationships (locational risk) affect SVCE's procurement costs.

A subcomponent of market price risk is market liquidity. Illiquid markets make it more difficult to buy or sell a commodity and can result in higher premiums on purchases or deeper discounts on sales.

Another dimension of market price risk is congestion risk. Congestion risks arise from the difference between the prices SVCE pays the CAISO to schedule its load and the prices SVCE receives from the CAISO for energy delivered by SVCE's suppliers.

3.3 Net Revenue Risk

Net Revenues are the total of all revenues received (from retail sales to customers and from the sale of any energy products that were surplus or unneeded) less the total costs (including the costs of long-term contracts, forward transactions, and spot market purchases plus all other operating costs). Net Revenue Risk is the risk that any of those factors—revenues or costs—changes (e.g. changes in market prices or retail sales volumes, or failures of counterparties). Net Revenue is the "bottom line" for SVCE as it determines the financial viability of the authority.

One of the main components of net revenue risk is on the retail revenue side, which is at risk when customers opt out from service by SVCE and return to PG&E, or if customers choose to find another supplier through direct access opportunities that may arise. In addition, when the Power Charge Indifference Adjustment (PCIA) is changed, it directly affects SVCE's bottom line if SVCE compensates by changing its retail rates.

3.4 Counterparty Credit and Performance Risk

Performance and credit risk refers to the inability or unwillingness of a counterparty to perform according to its contractual obligations or to extend credit. Failure to perform may arise if an energy supplier fails to deliver energy as agreed. There are four general performance and credit risk scenarios:

- 1.• counterparties and wholesale suppliers may fail to deliver energy or environmental attributes, requiring SVCE to purchase replacement products elsewhere, possibly at a higher cost;
- 2.• counterparties may fail to take delivery of energy or environmental attributes sold to them, necessitating a quick resale of the product elsewhere, possibly at a lower price;
- 3. counterparties may fail to pay for energy or environmental attributes delivered; and
- 4.• counterparties and suppliers may refuse to extend credit to SVCE, possibly resulting in higher collateral posting costs impacting SVCE's cash and bank lines of credit.

An important subcategory of credit risk is concentration risk. When a portfolio of positions and resources is concentrated in one or a very few counterparties, sources, or locations, it becomes more likely that major losses will be sustained in the event of non-performance by a counterparty or supplier or as a result of price fluctuations at one location.

3.5 Load and Generation Volumetric Risk

Energy deliveries must be planned for based upon forecasted load adjusted for distribution line losses. SVCE forecasts load over the long and short term and enters into long- and short-term fixed-price energy contracts to hedge its load.

Load forecasting risks arises from inaccurate load forecasts and can result in the over or under procurement of energy and/or revenues that deviate from approved budgets. Energy delivery risk occurs if a generator fails to deliver expected or forecast energy. Variations in wind speed and cloud cover can also impact the amount of electricity generated by solar and wind resources, and occasional oversupply of power on the grid can lead to curtailment of energy deliveries or reduce revenue as a result of low or negative prices at energy delivery points. Weather is an important variable that can result in higher or lower electricity usage due to heating and cooling needs.

In the CAISO markets this situation can result in both oversupply and undersupply of electricity relative to SVCE's load and the over or under scheduling of generation or load into the day ahead market relative to actual energy consumed or delivered in the real time market. Load and generation volumetric risk may result in unanticipated open positions and imbalance energy costs. Imbalance energy costs result from differences in the price or volume of generation or load scheduled into the day ahead market when compared to the price or volume of generation or load occurring in the real time market during that time period.

3.6 Operational Risk

Operational risk consists of the potential for failure to act effectively to plan, execute and control business activities. Operational risk includes the potential for:

- 1.• organizational structure that is ineffective in addressing risk (i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, ineffective internal checks and balances, incomplete, inaccurate and untimely forecasts or reporting, failure to separate incompatible functions, etc.);
- 2. absence, shortage or loss of key personnel or lack of cross functional training;
- 3.• lack or failure of facilities, equipment, systems and tools such as computers, software, communications links and data services;
- 4.• exposure to litigation or sanctions resulting from violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
- 5.• errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

3.7 Liquidity Risk

Liquidity Risk is the risk that SVCE will be unable to meet its financial obligations. This can be caused by unexpected financial events and/or inaccurate pro forma calculations, rate analysis, and debt analysis. Some unexpected financial events impacting liquidity could include:

- 1.• breach of SVCE credit covenants or thresholds; SVCE has credit covenants included in its banking and several short-term energy contracts. Breach of credit covenants or thresholds could result in the withdrawal of SVCE's line of credit or trigger the requirement to post collateral;
- 2. calls for collateral from the CAISO or SVCE's counterparties based on terms of

- transacting agreements; and
- 3.• from time-to-time SVCE may be the subject of legal or other claims arising from the normal course of business. Payment of a claim by SVCE could reduce SVCE's liquidity if the cause of loss is not covered by SVCE's insurance policies.

3.8 Regulatory/Legislative Risk

Regulatory risk encompasses market structure and operational risks associated with shifting state and federal regulatory policies, rules, and regulations that could negatively impact SVCE. Some examples are the potential increase of exit fees for customers served by Community Choice Aggregators such as SVCE that would result in higher electricity rates for SVCE's customers, and the risk that the customers would select another supplier through an expanded Direct Access program.

Legislative risk is associated with actions by federal and state legislative bodies, such as any adverse changes or requirements that may infringe on SVCE's autonomy, increase its costs, impact its customer base, or otherwise negatively impact SVCE's ability to fulfill its mission.

4 Internal Control Principles

Internal controls shall be based on proven principles that meet or exceed the requirements of financial institutions and credit rating agencies and good utility practice. The required controls shall include all customary and usual business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations and information pertinent to management, and facilitate attainment of business objectives. These controls are currently and shall remain fully integrated into all activities of the business and shall be consistent with stated objectives.

4.1 Segregation of duties

One of the main aspects of internal controls is the segregation of duties to ensure that the staff person that executes a transaction is not the same person that evaluates or settles the transaction. Appropriate segregation of duties is to be established and maintained throughout the system of controls over financial risks. Senior management must be diligent in ensuring that appropriate segregation of duties is adhered to within the context of organizational changes, while considering staffing limitations, SVCE's business model as a cost hedger, and the overall level of transactions with counterparties. Segregation of duties and functions between front, middle, and back-office activities is generally as follows:

- •• The Front Office is directly involved in resource planning, product procurement and sales transactions and implementation of strategies within authorized limits.
- •• The Middle Office's functions are related to risk management and counterparty credit. The primary responsibility is ensure that all products utilized and transaction activities are undertaken in compliance with current policy.
- •• The Back Office is comprised of those functions responsible for verification, validation accounting, processing, reconciling, and settling all transactions.

Controls over inputs and systems operations are of particular importance in ensuring the integrity of data used in risk control and management. In all cases, there will be an appropriate segregation of duties or oversight to reduce the risk of error and/or fraud.

To the maximum extent practicable given SVCE's business model and level of staffing, Front-Office activities will be functionally independent from Middle and BackOffice activities. As a result, the Front Office will generally neither perform nor supervise Middle-Office Risk Management activities, or Back Office financial accounting or settlements. The Director of

Power Resources is responsible for ensuring the Front Office's ability to perform tasks in compliance with this Policy. This arrangement will provide independent and regular management oversight for both risk-taking and risk-control activities. It will also allow for a clear separation of duties between the Front-Office transacting and Middle Office risk-control functions.

To the maximum extent practicable given SVCE's business model and level of staffing, Middle Office activities will be functionally independent from all Front Office and Back Office activities. The Middle Office will have primary responsibility for risk management oversight and policy development and compliance. If there are not adequate resources necessary to fully support a Middle Office, this function may be combined with another function, or be supported by qualified third party advisors, provided that appropriate segregation of duties or sufficient internal controls are maintained at all times.

To the maximum extent practicable given SVCE's business model and level of staffing, Back Office settlement activities will be functionally independent from all Front Office and Middle Office activities. The Back Office will have primary responsibility for all transaction confirmation, accounting, and reconciliation processes. If there are not adequate resources necessary to fully support a Back Office, this function may be combined with another function, or be supported by qualified third party advisors, provided that appropriate segregation of duties or sufficient internal controls are maintained at all times.

4.2 Additional Internal Controls

Besides segregation of duties, additional required operational control principles include the following, which the CEO shall implement by incorporating them into the ERM Guidelines and procedures:

- 1.• Delegation of authority that is commensurate with responsibility and capability, and relevant training to ensure adequate knowledge to operate in and comply with rules associated with the markets in which they transact (e.g., CAISO). Contract origination, commercial approval, legal review, invoice validation, and transaction auditing shall be performed by separate staff or contractor for any single transaction. No single staff member shall perform all these functions on any transaction.
- 2.• Defining authorized products and transactions (see Section 6.3).
- 3.• Defining procurement authority for any transactions for which procurement authority has not already been explicitly granted as set forth in SVCE's Purchasing Policy and any Board Resolution delegating energy procurement authority (e.g. Resolution 2016-15 which delegates authority to the CEO to execute confirmation agreements with energy service providers with whom SVCE has executed Master Agreements).
- 4. Defining proper trade capture process for executing power supply contracts.
- 5.• Complete and precise capture of transaction and other data, with standardization of electronic and hard copy documentation.
- 6.• Meaningful summarization and accurate reporting of transactions and other activity at regular intervals.
- 7. Consultation with legal counsel on all legal issues related to this Policy.
- 8.• Timely and accurate risk and performance measurement at regular intervals.
- 9.• Regular compliance review to ensure that this Policy and the Guidelines are adhered to, with specific guidelines for resolving instances of noncompliance.
- 10. Active participation by senior management in risk management processes.

5 Risk Management Business Practices

5.1 Risk Measurement Metrics and Reporting

A vital element of this Policy is the regular identification, measurement, and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis using risk measurement methodologies that quantify the risks associated with SVCE's procurement-related business activities and performance relative to goals. SVCE measures and updates its risks using a variety of tools that model programmatic financial projections, market exposure and risk metrics, as well as through short term budget updates.

SVCE seeks to minimize financial exposure to higher-volatility spot market wholesale electricity using rolling hedges and net open position percentage bands. Financial exposure creates budget uncertainty. To mitigate the financial exposure to short-time horizon price volatility, SVCE continually reduces its financial exposure by reducing the quantity of energy in either open long or short positions.

The following items are measured, monitored, and reported:

- 1.• Reserve Requirement Targets on no less than an annual basis, SVCE staff will monitor SVCE's reserves to ensure that they meet the targeted thresholds as outlined in SVCE's Cash Reserve Policy.
- 2.• Mark-to-Market Valuation marking to market is the process of determining the current value of contracted supply. A mark-to-market valuation shall be performed at least on a monthly basis.
- 3.• Exposure Reporting calculates the notional dollar and/or probabilistic-based risk exposure of open portfolio positions at current market prices. The exposure risk calculation shall be performed at least on a monthly basis.
- 4.• Open Position Monitoring on a monthly basis, SVCE shall calculate/monitor its open positions for all energy and capacity products.

Consistent with the above, the Middle Office will develop reports and provide feedback to the Risk Oversight Committee. Risk measurement methodologies shall be re-evaluated on a periodic basis to ensure SVCE adjusts its methods to reflect the evolving competitive landscape.

In addition to ensuring the portfolio is within the approved hedge bands, portfolio management decisions are supported by risk metrics from simulations of future market conditions, loads, and other material risk drivers for the portfolio. The following probabilistic risk metrics are regularly calculated and reported:

- Net Revenue at Risk: Potential adverse changes in net revenues for a given time period and confidence level.
- Reserve Requirements at Risk: Potential adverse change in reserves for a given time period and confidence level.
- Potential Future Exposure for counterparty credit risk: Maximum Mark-to-market counterparty exposures for a given time period and confidence level.
- Potential Collateral Exposure: Maximum of collateral that SVCE may have to post for a given time period and time horizon with a given counterparty.

Stress tests will used to understand the potential variability in SVCE's projected procurement costs, and resulting retail rate impacts and competitive positioning, associated

with adverse scenarios of material risk drivers. The IROC will develop, and update as necessary, a set of plausible and forward-looking stress-tests based on SVCE's portfolio and expected market conditions. The stress test analysis will complement other probabilistic metrics used to manage portfolio risks and its results will be distributed on at least an annual basis to the ROC.

5.2 Mark-to-Market Risk

SVCE manages its mark-to-market risk by comparing the current value of any wholesale trading positions and long-term supply contracts to the cost of the contracts. This is important if there are trading restrictions for entering into new transactions with certain counterparties based on the terms of the agreements and to counterparty credit limits. Being aware of the Mark-to-Market of the portfolio is important as it provides an indication of the competitiveness of the portfolio.

5.3 Market Price Risk

SVCE manages market price risk by determining its Load and Resource Balance which defines forecasted load, energy under contract and SVCE's open positions in various energy product types including renewable energy, carbon free energy, system power, and SVCE's procurement targets.

SVCE determines its NOP by comparing the forecasted use to supply resources on a monthly basis. The NOP is exposed to potentially volatile market prices. The quantity of energy SVCE will contract for in each year is guided by the NOP tolerances. Market price risk is determined by evaluating how costs could increase (or decrease) if market prices were to reach high (or low) values.

SVCE minimizes financial exposure to higher-volatility spot market wholesale electricity prices by hedging its NOP according to the NOP tolerance bands in Section 6.4. To reduce this exposure, SVCE's practice is to close its NOP (hedge at close to 100%) for the prompt month and quarter. The relatively tight prompt year tolerance band provides a high level of budget certainty. However, SVCE will continue to have some exposure to spot market prices due to the load changes and the difference between forecasted and actual load. These differences result in a need to purchase or sell energy in the short-term markets.

In general, SVCE will seek to spread out its long-term purchases of renewable energy to diversify exposure to market conditions and reduce the risk of concentrating purchases in any one year.

For products generally purchased through short- and medium-term contracts, SVCE follows a similar strategy of diversifying contracting over the delivery horizon.

As predominantly a net buyer, SVCE manages its market liquidity risk through purchasing at different intervals and maintaining a diverse set of counterparties to transact with.

Congestion risk is managed through the contracting process with a preference for day ahead scheduling and energy delivery at the NP 15 trading hub and through resource assessment and selection. Once energy is procured SVCE manages congestion risks through the prudent management of Congestion Revenue Rights (CRRs). CRRs are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. SVCE uses a third-party scheduling coordinator to manage its CRR portfolio. SVCE uses CRRs to reduce its exposure to congestion and other CAISO charges and will not use CRRs for speculative purposes.

5.4 Net Revenue Risk

SVCE manages net revenue risk by managing each of its contributing factors as described in other sections in this Policy—market price risk, load and generation volumetric risk, counterparty performance, etc. In addition, SVCE strives to provide competitively priced products that are valued by its customers to minimize opt out rates. Net revenue is monitored closely so that trend changes can be identified as early as possible and corrective action can be taken as appropriate.

5.5 Counterparty Credit and Performance Risk

SVCE evaluates and monitors the financial strength of service and energy providers. Generally, SVCE manages its exposure to energy suppliers through a preference for counterparties with Investment Grade Credit ratings as determined by Moody's or Standard and Poor's and through the use of security requirements in the form of cash and letters of credit. SVCE measures its mark-to-market counterparty credit exposure consistent with industry best practices. Additionally, SVCE manages counterparty credit risk by monitoring and controlling collateral, letters of credit and other forms of credit calls on the agency as well as paying bills in a timely fashion to avoid defaulting on any term of an agreement.

5.6 Load and Generation Volumetric Risk

SVCE manages energy delivery risks by ensuring that contracts include appropriate contractual penalties for non-delivery, acquiring energy from a geographically and technologically diverse portfolio of generating assets with a range of generation profiles.

SVCE manages load forecasting and related weather risks by contracting with qualified data management and scheduling coordinators who together provide the systems and data necessary to forecast and schedule load using good utility practice. SVCE's load scheduling strategy, as executed by its scheduling coordinator, ensures that price risk in the day ahead and real time CAISO markets is managed effectively and is consistent with good utility practice.

SVCE has contracted for long-term electricity resources including large hydroelectricity, renewable energy and storage to meet its RPS and clean goals. For many of these contracts, SVCE has scheduling coordination responsibilities and intends to work with Central Coast Community Energy (CCCE) to manage these resources.

SVCE's generation scheduling strategy, as executed by its scheduling coordinator and in coordination with CCCE when necessary, ensures that the resources are scheduled to produce needed PCC1 renewable energy certificates; manage curtailment risk; meet the regulatory requirements for Resource Adequacy; and optimize energy value either in the day-ahead or real time market. To effectively manage these resources, SVCE will delegate limited authority to its scheduling coordinator within the guidelines of the board-approved operating agreement. The CEO will approve an operating plan for management of each of its Power Purchase Agreements.

5.7 Operational Risk

Operational risks are managed through:

- Adherence to this Policy and oversight of procurement activity;
- Conformity to Employee Handbook;
- Staff resources, expertise and/or training reinforcing a culture of compliance;

- · Ongoing and timely internal and external audits; and
- · Cross-training amongst staff
- Authorized traders and others involved in any phase of transacting are prohibited to own stock in a current or potential counterparty to avoid a conflict of interest

5.8 Liquidity Risk

SVCE manages liquidity risk through adherence to its loan and power purchase agreement credit covenants, limiting commitments to provide security consistent with the Guidelines, ensuring it has adequate loan facilities, prudent cash and investment management, and adherence to its Cash Reserve Policy. SVCE monitors its liquidity (defined as unrestricted cash, investments and unused bank lines of credit) no less than weekly. SVCE utilizes scenario and sensitivity analyses while preparing budget, rate, and pro forma analyses in order to identify potential financial outcomes and ensure sufficient liquidity under adverse conditions.

5.9 Regulatory/Legislative Risk

SVCE manages its regulatory and legislative risk through active participation in working groups and advocacy coalitions such as the California Community Choice Association. SVCE regularly participates in regulatory rulemaking proceedings and legislative affairs to protect SVCE's interests.

5.10 Reporting

Reporting of critical information to relevant parties is a key component of energy risk management. Periodic reports will be provided to the ROC that shall provide sufficient details on SVCE's transactions, NOP, market exposure, credit exposure, counterparty credit ratings, transaction compliance, and other relevant data. The frequency and content of the reports for each oversight body shall be prescribed in the Energy Risk Management Guidelines.

Compliance exceptions are actions which violate the limits, and/or the procedures developed and approved by the ROC. For example, the risks associated with the portfolio or a specific transaction within the portfolio may fall outside of any established risk limit at a given point in time.

In the event a compliance exception occurs, the CEO is responsible for notifying the ROC within 24 hours via email after it is identified and ensure that the Front Office prepares a report (Exception Report) for the ROC at its next meeting. The Report shall identify the issue or violation, and discuss the alternative remedial actions, document the action taken in response, and describe the steps that will be taken to prevent a reoccurrence of the event.

6 Authorized Transaction and Trading Limitations

6.1 Trader Authorization Process

The Front Office shall request that the Middle Office begin the trader authorization process. The Middle Office shall verify that the trader's background and experience is sufficient to transact on behalf of SVCE. Before authorizing personnel to transact, the Middle Office shall:

• Determine that the trader has sufficient understanding and experience of the energy markets in which SVCE participates.

Before commencing transaction on behalf of SVCE, every trader must sign the trader integrity attestation (see Appendix A) to:

- affirm that they are not currently under investigation for market manipulation
- affirm that they have not been previously investigated for market manipulation.

In addition to that, traders are expected to complete any energy risk management related training put forth by the Middle Office.

The Middle Office shall ,as part of the ERMGuidelines, maintain a list of the authorized trading personnel and records for each trader of:

- Acknowledgement of ERM Policy
- Declaration of Conflict of Interest and;
- Trader Integrity Attestation.

6.2 Approved Markets

Approved markets in which SVCE authorized traders can participate are as follows:

- California Independent System Operator (CAISO);
- Bilateral energy, attributes and capacity market;
- Western Electricity Coordinating Council (WECC); and
- California Air Resources Board (CARB) emissions/carbon auctions

6.3 Approved Transactions

Authorized transactions which SVCE authorized traders can utilize must be consistent with this Policy. Transactions must be directly related to the procurement and/or administration of:

- electric energy,
- Resource adequacy products,
- Storage capacity,
- Transmission products,
- ancillary services,
- congestion revenue rights (CRRs),
- renewable energy,
- Carbon-free energy and/or attributes
- renewable energy certificates (RECs),
- · basis transactions,
- greenhouse gas emissions allowances,
- tolling agreements, & natural gas tolling agreements specifically approved by the board,
- natural gas hedges needed to manage risks associated with board approved natural gas
- tolling agreements. This includes use of both physical and financially settled natural gas hedges and
- bilateral purchases of energy products.

Prohibited transactions are those transactions that are not related to serving retail electric load and/or reducing financial exposure. Speculative buying and selling of energy products is prohibited, including the use of financial derivatives such as but not limited to futures, swaps, options, and swaptions. Speculation is defined as buying energy more than forecasted load plus reasonable planning reserves or selling energy or environmental

attributes that are not yet owned by SVCE. In no event shall speculative transactions be permitted.

6.4 Tolerance Bands

Hedging its load obligation is a key function for SVCE. The primary responsibility of the Front Office is to manage the energy portfolio by purchasing energy to hedge the cost of SVCE's load obligation and managing SVCE's portfolio of power resources to optimize value and load obligations. As described in Section 5.3 (Market Price Risk), SVCE ladders its energy purchases over time to access the market at different times. Every six months, the Front Office produces a Portfolio Management Plan that must be approved by the CEO. The Portfolio Management Plan must describe the current portfolio position, expected generation and variability, the recommended hedging transactions, the portfolio position after the transactions, and how the portfolio will remain within the Tolerance Bands in Table 1. Energy Hedging

SVCE will maintain Net Open Position (NOP) portfolio hedge levels within the tolerances outlined in Table 1 below:

Period*	Minimum	Maximum
	Tolerance	Tolerance
Prompt Quarter	85%	110%
Current Balance	80%	110%
of Year		
Year 2	70%	90%
Year 3	55%	80%
Year 4	50%	80%
Year 5	50%	80%

Table 1 Calendar Year Energy NOP Tolerance Bands

Resource Adequacy

SVCE must comply with the regulatory requirements for procurement of capacity products for Resource Adequacy (RA) needs. SVCE endeavors to purchase RA products over time to meet its obligation and to diversify itspurchases between suppliers and market conditions.

Renewable Portfolio Standard and Carbon-free

With respect to purchases to meet the Renewable Portfolio Standard (RPS), SVCE is guided by its Strategic Plan, which states that purchases shall meet legislative and regulatory requirements, Board directives and shall be staggered to accommodate regulatory uncertainty, changes in load and supply price risks and that the RPS portfolio should be diversified with respect to technologies.

6.5 Authorized Trading Limits

6.5.1 Transacting Authority Retained by the Board

The Board retains the authority to approve:

- All transactions with terms of over 12 months unless it has explicitly delegated authority to the CEO;
- All transactions with terms of over 5 years; and
- Master Agreements under which the CEO is delegated authority to transact

15

Draft ERM Policy - Clean Copy Proposed for Adoption: August 2023

^{*}For example, if the current year calendar year is 2023, then Year 2 is 2024.

6.5.2 Authority Delegated to the CEO by the Board

Under the Board-approved Purchasing Policy, the CEO is delegated the authority to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board. In addition, under Resolution 2019-03, the Board delegates to the CEO the authority to enter into Confirmations for terms not greater than 60 months and limited to authorized transactions consistent with forecasted load and withinthe Energy Hedge Tolerance Bands (as defined in the ERM Policy).

Table 2 below lists the authorized trading limits to transact on behalf of SVCE for all non-resource adequacy related products. If the CEO delegates some of his authority, he must document any such delegations in the Energy Risk Management Guidelines. Table 3 below lists the authorized annual trading limits for broker fees per broker.

Table 2: Authority Delegated to the CEO by the Board

Table 2: Authority Delegated to the CEO by the Board					
Product	Term Limit	Maturity Limit	Volume Limit	Counterparty Limits	Who
Energy, Capacity, and CAISO Ancillary Services	Day Ahead and Real Time	N/A	As needed to meet SVCE's expected load obligations with the CAISO	Any counterparty	CEO
Gas	Daily	N/A	As needed to meet SVCE's obligations for gas tolls*	Through the counterparty associated with the toll	CEO
Energy(Power) Gas,Capacity, CRRs,and Environmental Products	Up to 12 months	18 months	As needed to meet SVCE's expected load/gas toll *needs (per Purchasing Policy)	Any counterparty	CEO
	Up to 60 months	72 months	As needed to meet SVCE's expected load/gas toll* needs	Board-approved Master Agreements	CEO
	Over 60 months	As approved by Board	As approved by the Board	As approved by the Board	Board

^{*}natural gas hedges needed to manage risks associated with board approved natural gas tolling agreements

Table 3: Authority Delegated to the CEO by the Board for Brokered Transactions

Transaction Type	Fiscal Year Limit
Brokered Transactions Fees	\$500K of broker fee expense
	per broker

6.5.3 Resource Adequacy Authority Delegated to the CEO by the Board

The CEO has the authority to meet resource adequacy requirements based on CPUC and CAISO guidelines. Failure to meet California's RA compliance obligations may subject SVCE to hefty penalties.

To adequately and effectively meet RA requirements, the CEO needs a broad authority to transact for terms of up to five years and with a broad set of suppliers, including counterparties not under a Master Agreement. Table 4 lists the CEO's authority for RA transactions, which may be delegated provided proper documentation is established by the CEO.

Table4: Resource Adequacy Authority Delegated to the CEO by the Board

Product	Term Limit	Maturity Limit	Volume Limit	Counterparty Limit	Who
Resource Adequacy	Up to 60 months	72 months	As required to comply	Any counterparty	CEO

6.5.4• Limits of Authority Delegated to Authorized Personnel by the CEO

The Front Office periodically prepares a needs assessment and develops a Portfolio Plan, which defines the transactions required to meet SVCE's needs and to remain within the Tolerance Bands of Section 6.4. The CEO must approve the Portfolio Plan and may delegate some of his authority to Authorized Personnel (as determined according to the process described in Section 6.1).

Although the CEO may delegate some of his authority to Authorized Personnel, the Board limits the authority he can delegate as shown in Table 5 below:

Table 5: Limits of Authority Delegated to Authorized Personnel by the CEO

Product	Term Limit	Notional Value Limit*
Energy, Capacity, and CAISO Ancillary Services	Day Ahead and Real Time	As needed to meet SVCE's obligations with the CAISO
	Balance of the month	\$5 Million
Energy	Prompt month	\$7.5 Million
	Up to 12 months	\$25 Million
Describe Adequate Disable	Prompt month	As needed to meet SVCE's obligations
Resource Adequacy Products, CRRs	Balance of compliance year Up to 12 months	As needed to meet SVCE's obligations \$15 Million
Environmental Products (Carbon Free and Renewable Energy Resources)	Up to 12 months	\$15 Million

^{*}Notional value limits are inclusive of broker fees

6.6 Conflict of Interest

All SVCE employees who are involved in any aspect of transacting for energy or energy-related resources are prohibited from investing in any company with whom SVCE transacts, including those with whom it has executed enabling agreements. Prior to engaging in evaluation of, negotiation with, transacting with, or oversight of a transaction or potential

transaction with any company, all involved employees must ensure that they are divested in direct holdings with that company. The ban on investment and requirement to divest is regardless of whether the investment would require disclosure on the employee's FPPC Form 700.

SVCE employees will sign notice acknowledging policy regarding conflict of interest and report any existing or potential conflicts of interest (see Appendix A).

7 Risk Management Policy Governance

7.1 SVCE Board of Directors

The SVCE Board is responsible for adopting this Policy and reviewing it as needed every two calendar years. The Board also approves SVCE's annual budget, contracting authorities and delegates responsibilities for the management of SVCE's operations to its CEO.

7.2 Risk Oversight Committee

SVCE's CEO formed the Risk Oversight Committee (ROC) and is responsible to inform the ROC about any risk management issues and to provide assurance that this Policy is implemented. The CEO shall provide the ROC information and analysis that illustrate that all transactions are consistent with the risk tolerances and that risk management controls and practices are sufficient to monitor and manage risks that SVCE is exposed to.

The ROC shall meet at least once per calendar quarter, or as otherwise called to order by the CEO.

The ROC shall from time to time review the Energy Risk Management Guidelines defining in detail the internal controls, strategies and processes for managing market risks incurred through or attendant upon wholesale trading, retail marketing, long-term contracting, CRR trading and load and generation scheduling. The ROC shall receive and review information and reports regarding risk management, wholesale trading transactions, and the administration of supply contracts. The ROC will also review counterparty credit lines and cash reserves to ensure proper levels are maintained for credit, operations and liquidity. In addition, the ROC shall review any instances of non-compliance with any provisions of the Policy or Guidelines.

7.3 Internal Risk Oversight Committee

The CEO formed the Internal Risk Oversight Committee (IROC) to review in more detail any risk management issues that arise. The IROC comprises members of the Front, Middle, and Back Office and is used to coordinate any activities related to transacting. The IROC regularly reviews SVCE's risks and risk management strategies and assists the CEO to ensure that proper controls are in place. The IROC is responsible to develop, approve and update Energy Risk Management Guidelines that implement the Energy Risk Management Policy.

8 Appendix A: Acknowledgement of ERM Policy, Declaration of Conflict of Interest and Trader Integrity Attestation

To:	
Acknowledgement of ERM	l Policy
I acknowledge that I've r	ead, understand, and will comply with SVCE's Energy Risk Management Policy.
Declaration of Conflict of I	nterest
relationship that I may ha and to identify any real o	ligated to give notice in writing to Silicon Valley Clean Energy of any interest or eve in any counterparty that seeks to do business with Silicon Valley Clean Energy, or potential conflict of interest such counterparty has or may have with regard to contract or transaction with Silicon Valley Clean Energy, within 48-hours of conflict of interest.
	e following existing/potential conflict of interest situation arising from the ncerning Silicon Valley Clean Energy activities covered by the scope of the ERM:
a)•Persons/companies wit	th whom/which I have official dealings and/or private interests:
b)•Brief description of my	duties which involved the persons/companies mentioned in item a) above.
Trader Integrity Attestation	n – Please complete this section if you trade on behalf of SVCE
Yes No : Are you curre	ntly under investigation for market manipulation?
Yes No : Were you pre	viously investigated for market manipulation ?
Position and Name:	
Signature:	
Date: _	

Energy Risk Management Policy



Adopted: Adopted: November 10th, 2021 August 9,2023

Table of Contents

Contents

Gene	eral Provisions	3
1.1	Background and Purpose of Policy	3
1.2		
1.3		
1.4		
	5	
3.1		
3.2		
3.3		
	·	
	·	
_		
_		
-		
	, ,	
	g ,	
_	y	
	1.1 1.2 1.3 1.4 1.5 Risk Defii 3.1 3.2 3.3 3.4 3.5 3.6 3.7 3.8 Inte 4.1 4.2 8.3 5.4 5.5 5.7 5.8 5.9 5.10 6.5 6.5 6.5 6.5 6.5 6.6 6.5 6.6 6.7 6.7 6.7 6.7 6.7 6.7 6.7 6.7 6.7	1.1 Background and Purpose of Policy 1.2 Scope of Business and Related Market Risks 1.3 Policy Administration 1.4 Policy Distribution 1.5 Acknowledgement of ERM Risk Management Goals Definition of Market Risks 3.1 Mark-to-Market Risk 3.2 Market Price Risk 3.3 Net Revenue Risk 3.3 Net Revenue Risk 3.4 Counterparty Credit and Performance Risk 3.5 Load and Generation Volumetric Risk 3.6 Operational Risk 3.7 Liquidity Risk 3.8 Regulatory/Legislative Risk 3.8 Regulatory/Legislative Risk 3.9 Internal Control Principles 4.1 Segregation of duties 4.2 Additional Internal Controls Risk Management Business Practices 5.1 Risk Measurement Metrics and Reporting 5.2 Mark-to-Market Risk 5.3 Market Price Risk 5.4 Net Revenue Risk 5.5 Counterparty Credit and Performance Risk 5.6 Load and Generation Volumetric Risk 5.7 Operational Risk 5.8 Liquidity Risk 5.9 Regulatory/Legislative Risk 5.10 Reporting Authorized Transaction and Trading Limitations 6.1 Trader Authorization Process 6.2 Approved Markets 6.3 Approved Transaction and Trading Limitations 6.5 Transaction and Trading Limitations 6.5 Authorized Transaction and Service Risk 6.5 Authorized Transactions 6.5 Authorized Transactions 6.5 Authorized Transactions 6.5 Authorized Transactions 6.5 Authorized Presonnel by the Board 6.5 Authorized Transaction Authority Delegated to the CEO by the Board 6.5.1 Transaction Authority Delegated to the CEO by the Board 6.5.2 Resource Adequacy Authority Delegated to the CEO by the Board 6.5.3 Resource Adequacy Authority Delegated to the CEO by the Board 6.5.4 Limits of Authority Delegated to Authorized Personnel by the CEO 6.6 Conflict of Interest Risk Management Policy Governance 7.1 SVCE Board of Directors. 7.2 Risk Oversight Committee

1 General Provisions

1.1 Background and Purpose of Policy

Silicon Valley Clean Energy's (SVCE) mission is to reduce dependence on fossil fuels by providing carbon free, affordable, and reliable electricity and innovative programs for the SVCE community.

This Energy Risk Management Policy (Policy) has been developed to help ensure that SVCE achieves its mission and adheres to policies established by the SVCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations. SVCE is not engaged in the power supply business for profit and is, therefore, precluded by this Policy from engaging in many of the risk-taking activities typical to an organization orientated solely toward profit maximization.

This Policy defines SVCE's general energy risk management framework and provides management with the authority to establish processes for monitoring, measuring, reporting, and controlling market and credit risks to which SVCE is exposed in its normal course of business.

1.2 Scope of Business and Related Market Risks

SVCE provides energy to retail customers in its service territory that entails business activities such as; bilateral purchases and sales of electricity under short-, medium- and long-term contracts; scheduling of load and generation of electricity into California Independent Systems Operator (CAISO) markets; retail marketing of electricity to consumers within its service territory; compliance with voluntary objectives and regulatory requirements as it relates to carbon free and renewable portfolio standard (RPS) compliant energy; participation in CAISO Congestion Revenue Rights ("CRRs") market; managing the balance of load and generation over short, medium and long term horizons; and compliance with California Public Utilities Commission (CPUC) Resource Adequacy (RA) requirements.

Examples of energy market risks include, but are not limited to, the following:

- Mark-to-Market Risk
- Market Price Risk
- Net Revenue Risk
- Counterparty Credit and Performance Risk
- Load and Generation Volumetric Risk
- Operational Risk
- Liquidity Risk
- Regulatory/Legislative Risk

This Policy focuses on the following:

- Risk Management Goals and Principles
- Definitions of Risks
- Internal Control Principles
- Risk Management Business Practices
- Authorized Transaction and Trading Limitations
- Risk Management Governance

This Policy does not address the following types of general business risk, which are treated separately in other official policies, ordinances, and regulations of SVCE: fire, accident and casualty; health, safety, and workers' compensation; cybersecurity, general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to energy market risks as herein defined, and not those other categories of risk.

1.3 Policy Administration

This Energy Risk Management Policy (Policy) is adopted by the SVCE Board of Directors and will be reviewed and updated as needed at least every two calendar years by SVCE's Board. The CEO is responsible for implementation of the Policy. The CEO is also responsible to develop Energy Risk Management Guidelines (Guidelines), which is required for staff to implement the Policy.

1.4 Policy Distribution

This Policy shall be distributed to all SVCE employees and third-party contractors who are engaged in the planning, procurement, sale and scheduling of electricity on SVCE's behalf and/or in other SVCE departments providing oversight and support for these activities.

1.5 Acknowledgement of ERM

All SVCE staff participating in any activity or transaction within the scope of the ERM shall sign, upon joining or upon any material revision of the ERM policy, that such SVCE representative has:

Read the ERM;

Understands the terms and agreements of said ERM;

Will comply with said ERM;

SVCE employees who are within the scope of the ERM understand that any violation of said ERM may subject the employee to discipline up to and including termination of employment;

2 Risk Management Goals

Although SVCE does not engage in risk-taking activities typical in a for-profit organization, certain risks are incidental to the normal power supply operations and hedging activities. SVCE's policy is to manage risk inherent with serving load, including the risks associated with normal cost-hedging activities, those associated with participation in wholesale markets in general and the CAISO in particular.

The goals of energy risk management shall be to:

- 1. assist in achieving the business objectives in the Strategic Plan, Integrated Resource Plan (IRP) and Cash Reserve Policy including retail rate stability and competitiveness and the accumulation of financial reserves;
- 2. avoid losses and excessive costs which would materially impact the financial condition of SVCE;
- 3. establish the parameters for energy procurement and sales activity to obtain the best possible price while ensuring compliance with Board-approved policies;
- 4. identify specific cost, regulatory and legislative risks that could adversely affect

SVCE's ability to achieve its business objectives, and to the extent possible, quantify and measure performance against those risks;

- 5. assist in assuring that market activities and transactions are undertaken in compliance with established procurement authorities, applicable laws, regulations and orders;
- encourage the development and maintenance of a corporate culture at SVCE in which the proper balance is struck between control and facilitation and in which professionalism, discipline, technical skills and analytical rigor come together to achieve SVCE objectives; and
- 7. manage business risks to acceptable levels consistent with retail rate-setting, resource procurement and cash reserve management.

SVCE manages its energy resources and transactions to provide its customers with low-cost renewable, carbon free and other energy while at the same time minimizing risks. The risk management principles that SVCE will use include:

- 1. Undue exposure to CAISO or bilateral energy market volatility for the purpose of potentially achieving lower costs but at the risk that costs may, in fact, be much higher, will not be accepted.
- 2. Procurement and hedging strategy will be determined by analytical methods supplemented by experienced judgement. SVCE will use that experienced judgement and its analytical tools to assess system cost drivers such as weather, short term energy prices, load variation and operational constraints to manage timing and quantity of purchases and sales of energy and related services, consistent with the limits identified in this Policy.
- 3. When actions are taken that are consistent with this Policy and for the combined goal of low costs and optimized risk, those actions are considered to be consistent with the objectives of this Policy.
- 4. SVCE will not engage in transactions, without proper authorization, whose purpose is not tied to managing costs and risks or are outside of the limits identified in this Policy.

3 Definition of Market Risks

The term "market risks," as used here, refers specifically to those categories of risk which relate to SVCE's participation in wholesale and retail markets as a Load Serving Entity (LSE) and its interests in long-term contracts. Market risks include market price risk, counterparty credit and performance risk, load and generation volumetric risk, operational risk, liquidity risk, and regulatory and legislative risk. These categories are defined and explained as follows.

3.1 Mark-to-Market Risk

Mark-to-Market risk is the risk that wholesale trading positions, long-term supply contracts and generation resources may move "out of the money," that is, become less valuable in comparison with similar positions, contracts, or resources obtainable at present prices. These same positions can also be "in the money" if they become more valuable in comparison to similar positions, contracts, or resources obtainable at present market prices. This valuation methodology is commonly referred to as "Mark-to-Market." If SVCE is "out of the money" on a substantial portion of its contracts, it may have to charge higher retail rates. This may erode SVCE's competitive position and market share if other market participants (e.g., Direct Access providers or PG&E) are able to procure power at a lower cost and offer lower retail electricity rates.

3.2 Market Price Risk

Market Price risk is the risk that market prices change, resulting in changes to energy

procurement cost. For example, the cost for the unhedged portion of a supply portfolio (net open position) will increase when market prices increase. Conversely, if resources are in excess to needs and market prices fall, the revenue expected from the sale of the surplus resources will decrease. In addition, uncertain market price relationships (locational risk) affect SVCE's procurement costs.

A subcomponent of market price risk is market liquidity. Illiquid markets make it more difficult to buy or sell a commodity and can result in higher premiums on purchases or deeper discounts on sales.

Another dimension of market price risk is congestion risk. Congestion risks arise from the difference between the prices SVCE pays the CAISO to schedule its load and the prices SVCE receives from the CAISO for energy delivered by SVCE's suppliers.

3.3 Net Revenue Risk

Net Revenues are the total of all revenues received (from retail sales to customers and from the sale of any energy products that were surplus or unneeded) less the total costs (including the costs of long-term contracts, forward transactions, and spot market purchases plus all other operating costs). Net Revenue Risk is the risk that any of those factors—revenues or costs—changes (e.g. changes in market prices or retail sales volumes, or failures of counterparties). Net Revenue is the "bottom line" for SVCE as it determines the financial viability of the authority.

One of the main components of net revenue risk is on the retail revenue side, which is at risk when customers opt out from service by SVCE and return to PG&E, or if customers choose to find another supplier through direct access opportunities that may arise. In addition, when the Power Charge Indifference Adjustment (PCIA) is changed, it directly affects SVCE's bottom line if SVCE compensates by changing its retail rates.

3.4 Counterparty Credit and Performance Risk

Performance and credit risk refers to the inability or unwillingness of a counterparty to perform according to its contractual obligations or to extend credit. Failure to perform may arise if an energy supplier fails to deliver energy as agreed. There are four general performance and credit risk scenarios:

- counterparties and wholesale suppliers may fail to deliver energy or environmental attributes, requiring SVCE to purchase replacement products elsewhere, possibly at a higher cost;
- counterparties may fail to take delivery of energy or environmental attributes sold to them, necessitating a quick resale of the product elsewhere, possibly at a lower price;
- 3. counterparties may fail to pay for energy or environmental attributes delivered; and
- 4. counterparties and suppliers may refuse to extend credit to SVCE, possibly resulting in higher collateral posting costs impacting SVCE's cash and bank lines of credit.

An important subcategory of credit risk is concentration risk. When a portfolio of positions and resources is concentrated in one or a very few counterparties, sources, or locations, it becomes more likely that major losses will be sustained in the event of non-performance by a counterparty or supplier or as a result of price fluctuations at one location.

3.5 Load and Generation Volumetric Risk

Energy deliveries must be planned for based upon forecasted load adjusted for distribution line losses. SVCE forecasts load over the long and short term and enters into long- and short-term fixed-price energy contracts to hedge its load.

Load forecasting risks arises from inaccurate load forecasts and can result in the over or under procurement of energy and/or revenues that deviate from approved budgets. Energy delivery risk occurs if a generator fails to deliver expected or forecast energy. Variations in wind speed and cloud cover can also impact the amount of electricity generated by solar and wind resources, and occasional oversupply of power on the grid can lead to curtailment of energy deliveries or reduce revenue as a result of low or negative prices at energy delivery points. Weather is an important variable that can result in higher or lower electricity usage due to heating and cooling needs.

In the CAISO markets this situation can result in both oversupply and undersupply of electricity relative to SVCE's load and the over or under scheduling of generation or load into the day ahead market relative to actual energy consumed or delivered in the real time market. Load and generation volumetric risk may result in unanticipated open positions and imbalance energy costs. Imbalance energy costs result from differences in the price or volume of generation or load scheduled into the day ahead market when compared to the price or volume of generation or load occurring in the real time market during that time period.

3.6 Operational Risk

Operational risk consists of the potential for failure to act effectively to plan, execute and control business activities. Operational risk includes the potential for:

- 1. organizational structure that is ineffective in addressing risk (i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, ineffective internal checks and balances, incomplete, inaccurate and untimely forecasts or reporting, failure to separate incompatible functions, etc.);
- 2. absence, shortage or loss of key personnel or lack of cross functional training;
- 3. lack or failure of facilities, equipment, systems and tools such as computers, software, communications links and data services;
- 4. exposure to litigation or sanctions resulting from violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
- 5. errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

3.7 Liquidity Risk

Liquidity Risk is the risk that SVCE will be unable to meet its financial obligations. This can be caused by unexpected financial events and/or inaccurate pro forma calculations, rate analysis, and debt analysis. Some unexpected financial events impacting liquidity could include:

- breach of SVCE credit covenants or thresholds; SVCE has credit covenants included in its banking and several short-term energy contracts. Breach of credit covenants or thresholds could result in the withdrawal of SVCE's line of credit or trigger the requirement to post collateral;
- 2. calls for collateral from the CAISO or SVCE's counterparties based on terms of

- transacting agreements; and
- 3. from time-to-time SVCE may be the subject of legal or other claims arising from the normal course of business. Payment of a claim by SVCE could reduce SVCE's liquidity if the cause of loss is not covered by SVCE's insurance policies.

3.8 Regulatory/Legislative Risk

Regulatory risk encompasses market structure and operational risks associated with shifting state and federal regulatory policies, rules, and regulations that could negatively impact SVCE. Some examples are the potential increase of exit fees for customers served by Community Choice Aggregators such as SVCE that would result in higher electricity rates for SVCE's customers, and the risk that the customers would select another supplier through an expanded Direct Access program.

Legislative risk is associated with actions by federal and state legislative bodies, such as any adverse changes or requirements that may infringe on SVCE's autonomy, increase its costs, impact its customer base, or otherwise negatively impact SVCE's ability to fulfill its mission.

4 Internal Control Principles

Internal controls shall be based on proven principles that meet or exceed the requirements of financial institutions and credit rating agencies and good utility practice. The required controls shall include all customary and usual business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations and information pertinent to management, and facilitate attainment of business objectives. These controls are currently and shall remain fully integrated into all activities of the business and shall be consistent with stated objectives.

4.1 Segregation of duties

One of the main aspects of internal controls is the segregation of duties to ensure that the staff person that executes a transaction is not the same person that evaluates or settles the transaction. Appropriate segregation of duties is to be established and maintained throughout the system of controls over financial risks. Senior management must be diligent in ensuring that appropriate segregation of duties is adhered to within the context of organizational changes, while considering staffing limitations, SVCE's business model as a cost hedger, and the overall level of transactions with counterparties. Segregation of duties and functions between front, middle, and back-office activities is generally as follows:

- The Front Office is directly involved in resource planning, product procurement and sales transactions and implementation of strategies within authorized limits.
- The Middle Office's functions are related to risk management and counterparty credit. The primary responsibility is ensure that all products utilized and transaction activities are undertaken in compliance with current policy.
- The Back Office is comprised of those functions responsible for verification, validation accounting, processing, reconciling, and settling all transactions.

Controls over inputs and systems operations are of particular importance in ensuring the integrity of data used in risk control and management. In all cases, there will be an appropriate segregation of duties or oversight to reduce the risk of error and/or fraud.

To the maximum extent practicable given SVCE's business model and level of staffing, Front-Office activities will be functionally independent from Middle and BackOffice activities. As a result, the Front Office will generally neither perform nor supervise Middle-Office Risk Management activities, or Back Office financial accounting or settlements. The Director of

Power Resources is responsible for ensuring the Front Office's ability to perform tasks in compliance with this Policy. This arrangement will provide independent and regular management oversight for both risk-taking and risk-control activities. It will also allow for a clear separation of duties between the Front-Office transacting and Middle Office risk-control functions.

To the maximum extent practicable given SVCE's business model and level of staffing, Middle Office activities will be functionally independent from all Front Office and Back Office activities. The Middle Office will have primary responsibility for risk management oversight and policy development and compliance. If there are not adequate resources necessary to fully support a Middle Office, this function may be combined with another function, or be supported by qualified third party advisors, provided that appropriate segregation of duties or sufficient internal controls are maintained at all times.

To the maximum extent practicable given SVCE's business model and level of staffing, Back Office settlement activities will be functionally independent from all Front Office and Middle Office activities. The Back Office will have primary responsibility for all transaction confirmation, accounting, and reconciliation processes. If there are not adequate resources necessary to fully support a Back Office, this function may be combined with another function, or be supported by qualified third party advisors, provided that appropriate segregation of duties or sufficient internal controls are maintained at all times.

4.2 Additional Internal Controls

Besides segregation of duties, additional required operational control principles include the following, which the CEO shall implement by incorporating them into the ERM Guidelines and procedures:

- 1. Delegation of authority that is commensurate with responsibility and capability, and relevant training to ensure adequate knowledge to operate in and comply with rules associated with the markets in which they transact (e.g., CAISO). Contract origination, commercial approval, legal review, invoice validation, and transaction auditing shall be performed by separate staff or contractor for any single transaction. No single staff member shall perform all these functions on any transaction.
- 2. Defining authorized products and transactions (see Section 6.3).
- 3. Defining procurement authority for any transactions for which procurement authority has not already been explicitly granted as set forth in SVCE's Purchasing Policy and any Board Resolution delegating energy procurement authority (e.g. Resolution 2016-15 which delegates authority to the CEO to execute confirmation agreements with energy service providers with whom SVCE has executed Master Agreements).
- 4. Defining proper trade capture process for executing power supply contracts.
- 5. Complete and precise capture of transaction and other data, with standardization of electronic and hard copy documentation.
- 6. Meaningful summarization and accurate reporting of transactions and other activity at regular intervals.
- 7. Consultation with legal counsel on all legal issues related to this Policy.
- 8. Timely and accurate risk and performance measurement at regular intervals.
- 9. Regular compliance review to ensure that this Policy and the Guidelines are adhered to, with specific guidelines for resolving instances of noncompliance.
- 10. Active participation by senior management in risk management processes.

5 Risk Management Business Practices

5.1 Risk Measurement Metrics and Reporting

A vital element of this Policy is the regular identification, measurement, and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis using risk measurement methodologies that quantify the risks associated with SVCE's procurement-related business activities and performance relative to goals. SVCE measures and updates its risks using a variety of tools that model programmatic financial projections, market exposure and risk metrics, as well as through short term budget updates.

SVCE seeks to minimize financial exposure to higher-volatility spot market wholesale electricity using rolling hedges and net open position percentage bands. Financial exposure creates budget uncertainty. To mitigate the financial exposure to short-time horizon price volatility, SVCE continually reduces its financial exposure by reducing the quantity of energy in either open long or short positions.

The following items are measured, monitored, and reported:

- 1. Reserve Requirement Targets on no less than an annual basis, SVCE staff will monitor SVCE's reserves to ensure that they meet the targeted thresholds as outlined in SVCE's Cash Reserve Policy.
- 2. Mark-to-Market Valuation marking to market is the process of determining the current value of contracted supply. A mark-to-market valuation shall be performed at least on a monthly basis.
- 3. Exposure Reporting calculates the notional dollar and/or probabilistic-based risk exposure of open portfolio positions at current market prices. The exposure risk calculation shall be performed at least on a monthly basis.
- 4. Open Position Monitoring on a monthly basis, SVCE shall calculate/monitor its open positions for all energy and capacity products.

Consistent with the above, the Middle Office will develop reports and provide feedback to the Risk Oversight Committee. Risk measurement methodologies shall be re-evaluated on a periodic basis to ensure SVCE adjusts its methods to reflect the evolving competitive landscape.

In addition to ensuring the portfolio is within the approved hedge bands, portfolio management decisions are supported by risk metrics from simulations of future market conditions, loads, and other material risk drivers for the portfolio. The following probabilistic risk metrics are regularly calculated and reported:

- Net Revenue at Risk: Potential adverse changes in net revenues for a given time period and confidence level.
- Reserve Requirements at Risk: Potential adverse change in reserves for a given time period and confidence level.
- Potential Future Exposure for counterparty credit risk: Maximum Mark-to-market counterparty exposures for a given time period and confidence level.
- Potential Collateral Exposure: Maximum of collateral that SVCE may have to post for a given time period and time horizon with a given counterparty.

Stress tests will used to understand the potential variability in SVCE's projected procurement costs, and resulting retail rate impacts and competitive positioning, associated

with adverse scenarios of material risk drivers. The IROC will develop, and update as necessary, a set of plausible and forward-looking stress-tests based on SVCE's portfolio and expected market conditions. The stress test analysis will complement other probabilistic metrics used to manage portfolio risks and its results will be distributed on at least an annual basis to the ROC.

5.2 Mark-to-Market Risk

SVCE manages its mark-to-market risk by comparing the current value of any wholesale trading positions and long-term supply contracts to the cost of the contracts. This is important if there are trading restrictions for entering into new transactions with certain counterparties based on the terms of the agreements and to counterparty credit limits. Being aware of the Mark-to-Market of the portfolio is important as it provides an indication of the competitiveness of the portfolio.

5.3 Market Price Risk

SVCE manages market price risk by determining its Load and Resource Balance which defines forecasted load, energy under contract and SVCE's open positions in various energy product types including renewable energy, carbon free energy, system power, and SVCE's procurement targets.

SVCE determines its NOP by comparing the forecasted use to supply resources on a monthly basis. The NOP is exposed to potentially volatile market prices. The quantity of energy SVCE will contract for in each year is guided by the NOP tolerances. Market price risk is determined by evaluating how costs could increase (or decrease) if market prices were to reach high (or low) values.

SVCE minimizes financial exposure to higher-volatility spot market wholesale electricity prices by hedging its NOP according to the NOP tolerance bands in Section 6.4. To reduce this exposure, SVCE's practice is to close its NOP (hedge at close to 100%) for the prompt month and quarter. The relatively tight prompt year tolerance band provides a high level of budget certainty. However, SVCE will continue to have some exposure to spot market prices due to the load changes and the difference between forecasted and actual load. These differences result in a need to purchase or sell energy in the short-term markets.

In general, SVCE will seek to spread out its long-term purchases of renewable energy to diversify exposure to market conditions and reduce the risk of concentrating purchases in any one year.

For products generally purchased through short- and medium-term contracts, SVCE follows a similar strategy of diversifying contracting over the delivery horizon.

As predominantly a net buyer, SVCE manages its market liquidity risk through purchasing at different intervals and maintaining a diverse set of counterparties to transact with.

Congestion risk is managed through the contracting process with a preference for day ahead scheduling and energy delivery at the NP 15 trading hub and through resource assessment and selection. Once energy is procured SVCE manages congestion risks through the prudent management of Congestion Revenue Rights (CRRs). CRRs are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. SVCE uses a third-party scheduling coordinator to manage its CRR portfolio. SVCE uses CRRs to reduce its exposure to congestion and other CAISO charges and will not use CRRs for speculative purposes.

5.4 Net Revenue Risk

SVCE manages net revenue risk by managing each of its contributing factors as described in other sections in this Policy—market price risk, load and generation volumetric risk, counterparty performance, etc. In addition, SVCE strives to provide competitively priced products that are valued by its customers to minimize opt out rates. Net revenue is monitored closely so that trend changes can be identified as early as possible and corrective action can be taken as appropriate.

5.5 Counterparty Credit and Performance Risk

SVCE evaluates and monitors the financial strength of service and energy providers. Generally, SVCE manages its exposure to energy suppliers through a preference for counterparties with Investment Grade Credit ratings as determined by Moody's or Standard and Poor's and through the use of security requirements in the form of cash and letters of credit. SVCE measures its mark-to-market counterparty credit exposure consistent with industry best practices. Additionally, SVCE manages counterparty credit risk by monitoring and controlling collateral, letters of credit and other forms of credit calls on the agency as well as paying bills in a timely fashion to avoid defaulting on any term of an agreement.

5.6 Load and Generation Volumetric Risk

SVCE manages energy delivery risks by ensuring that contracts include appropriate contractual penalties for non-delivery, acquiring energy from a geographically and technologically diverse portfolio of generating assets with a range of generation profiles.

SVCE manages load forecasting and related weather risks by contracting with qualified data management and scheduling coordinators who together provide the systems and data necessary to forecast and schedule load using good utility practice. SVCE's load scheduling strategy, as executed by its scheduling coordinator, ensures that price risk in the day ahead and real time CAISO markets is managed effectively and is consistent with good utility practice.

SVCE has contracted for long-term electricity resources including large hydroelectricity, renewable energy and storage to meet its RPS and clean goals. For many of these contracts, SVCE has scheduling coordination responsibilities and intends to work with Central Coast Community Energy (CCCE) to manage these resources.

SVCE's generation scheduling strategy, as executed by its scheduling coordinator and in coordination with CCCE when necessary, ensures that the resources are scheduled to produce needed PCC1 renewable energy certificates; manage curtailment risk; meet the regulatory requirements for Resource Adequacy; and optimize energy value either in the day-ahead or real time market. To effectively manage these resources, SVCE will delegate limited authority to its scheduling coordinator within the guidelines of the board-approved operating agreement. The CEO will approve an operating plan for management of each of its Power Purchase Agreements.

5.7 Operational Risk

Operational risks are managed through:

- Adherence to this Policy and oversight of procurement activity;
- Conformity to Employee Handbook;
- Staff resources, expertise and/or training reinforcing a culture of compliance;

- · Ongoing and timely internal and external audits; and
- Cross-training amongst staff
- Authorized traders and others involved in any phase of transacting are prohibited to own stock in a current or potential counterparty to avoid a conflict of interest

5.8 Liquidity Risk

SVCE manages liquidity risk through adherence to its loan and power purchase agreement credit covenants, limiting commitments to provide security consistent with the Guidelines, ensuring it has adequate loan facilities, prudent cash and investment management, and adherence to its Cash Reserve Policy. SVCE monitors its liquidity (defined as unrestricted cash, investments and unused bank lines of credit) no less than weekly. SVCE utilizes scenario and sensitivity analyses while preparing budget, rate, and pro forma analyses in order to identify potential financial outcomes and ensure sufficient liquidity under adverse conditions.

5.9 Regulatory/Legislative Risk

SVCE manages its regulatory and legislative risk through active participation in working groups and advocacy coalitions such as the California Community Choice Association. SVCE regularly participates in regulatory rulemaking proceedings and legislative affairs to protect SVCE's interests.

5.10 Reporting

Reporting of critical information to relevant parties is a key component of energy risk management. Periodic reports will be provided to the ROC that shall provide sufficient details on SVCE's transactions, NOP, market exposure, credit exposure, counterparty credit ratings, transaction compliance, and other relevant data. The frequency and content of the reports for each oversight body shall be prescribed in the Energy Risk Management Guidelines.

Compliance exceptions are actions which violate the limits, and/or the procedures developed and approved by the ROC. For example, the risks associated with the portfolio or a specific transaction within the portfolio may fall outside of any established risk limit at a given point in time.

In the event a compliance exception occurs, the CEO is responsible for notifying the ROC within 24 hours via email after it is identified and ensure that the Front Office prepares a report (Exception Report) for the ROC at its next meeting. The Report shall identify the issue or violation, and discuss the alternative remedial actions, document the action taken in response, and describe the steps that will be taken to prevent a reoccurrence of the event.

6 Authorized Transaction and Trading Limitations

6.1 Trader Authorization Process

The Front Office shall request that the Middle Office begin the trader authorization process. The Middle Office shall verify that the trader's background and experience is sufficient to transact on behalf of SVCE._-Before authorizing personnel to transact, the Middle Office

shall:

- Require that trader affirm that they are not currently under investigation for market manipulation;
- Require that trader affirm that they have not been previously investigated for market manipulation;
- Verify that trader has read and understands SVCE's ERM Policy and Guidelines; and
- Determine that the trader has sufficient understanding and experience of the energy markets in which SVCE participates.

Before commencing transaction on behalf of SVCE, every trader must sign the trader integrity attestation (see Appendix A) to:

- affirm that they are not currently under investigation for market —manipulation
- affirm that they have not been previously investigated for market manipulation.

<u>In addition to that, traders are expected to complete any energy risk management related training put forth by the Middle Office.</u>

The Middle Office shall maintain a list of the authorized trading personnel as part of the ERM Guidelines, maintain a list of the authorized trading personnel and records for each trader of:

- Acknowledgement of ERM Policy
- Declaration of Conflict of Interest and;
- Trader Integrity Attestation.

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6.2 Approved Markets

Approved markets in which SVCE authorized traders can participate are as follows:

- California Independent System Operator (CAISO);
- Bilateral energy, attributes and capacity market;
- Western Electricity Coordinating Council (WECC); and
- California Air Resources Board (CARB) emissions/carbon auctions

6.3 Approved Transactions

Authorized transactions which SVCE authorized traders can utilize must be consistent with this Policy. Transactions must be directly related to the procurement and/or administration of:

- electric energy,
- Resource adequacy products,
- Storage capacity,
- reserve capacity,
- Transmission products,
- and distribution service,
- ancillary services,
- congestion revenue rights (CRRs),
- renewable energy,
- Carbon-free energy and/or attributes
- renewable energy certificates (RECs),
- basis transactions,
- greenhouse gas emissions allowances,
- tolling agreements, & natural gas tolling agreements specifically approved by the board,

- natural gas hedges needed to manage risks associated with board approved natural gas tolling agreements. This includes use of both physical and financially settled natural gas hedges and
- bilateral purchases of energy products.

Prohibited transactions are those transactions that are not related to serving retail electric load and/or reducing financial exposure. Speculative buying and selling of energy products is prohibited, including with the use of financial derivatives such as but not limited to futures, swaps, options, and swaptions. Speculation is defined as buying energy in excess of more than forecasted load plus reasonable planning reserves or selling energy or environmental attributes that are not yet ____ owned by SVCE.-_In no event shall speculative transactions be permitted. Any financial derivatives transaction including, but not limited to futures, swaps, options, and swaptions are also prohibited.

6.4 Tolerance Bands

Hedging its load obligation is a key function for SVCE. The primary responsibility of the Front Office is to manage the energy portfolio by purchasing energy to hedge the cost of SVCE's load obligation and managing SVCE's portfolio of power resources to optimize value and load obligations. As described in Section 5.3 (Market Price Risk), SVCE ladders its energy purchases over time to access the market at different times. Every six months, the Front Office produces a Portfolio Management Plan that must be approved by the CEO. The Portfolio Management Plan must describe the current portfolio position, expected generation and variability, the recommended hedging transactions, the portfolio position after the transactions, and how the portfolio will remain within the Tolerance Bands in Table 1.

Energy Hedging

SVCE will maintain Net Open Position (NOP) portfolio hedge levels within the tolerances outlined in Table 1 below:

Table 1 Calendar Year Energy NOP Tolerance Bands

Period*	Minimum	Maximum
	Tolerance	Tolerance
Prompt Quarter	85%	110%
Current Balance	80%	110%
of Year		
Year 2	70%	90%
Year 3	55%	80%
Year 4	50%	80%
Year 5	50%	80%

^{*}For example, if the current year calendar year is 20231, then Year 2 is 20242.

Resource Adequacy

SVCE must comply with the regulatory requirements for procurement of capacity products for Resource Adequacy (RA) needs.

SVCE endeavors to purchase RA products over time to meet its obligation and to diversify its purchases between suppliers and market conditions.

Renewable Portfolio Standard and Carbon-free

With respect to purchases to meet the Renewable Portfolio Standard (RPS), SVCE is guided by its Strategic Plan, which states that purchases should be staggered tshallo meet hallowed legislative and regulatory requirements, Board directives and shall be staggered to accommodate regulatory uncertainty, changes in load and supply price risks and that the RPS portfolio should be diversified with respect to technologies.

6.5 Authorized Trading Limits

6.5.1 Transacting Authority Retained by the Board

The Board retains the authority to approve:

- All transactions with terms of over 12 months unless it has explicitly delegated authority to the CEO;
- All transactions with terms of over 5 years; and
- Master Agreements under which the CEO is delegated authority to transact

6.5.2 Authority Delegated to the CEO by the Board

Under the Board-approved Purchasing Policy, the CEO is delegated the authority to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board. In addition, under Resolution 2019-03, the Board delegates to the CEO the authority to enter into Confirmations for terms not greater than 60 months and limited to <u>authorized transactions purchases of Product econsistent</u> with forecasted load and withinthe Energy Hedge Tolerance Bands (as defined in the ERM Policy).

Table 2 below lists the authorized trading limits to transact on behalf of SVCE for all non-resource adequacy related products. If the CEO delegates some of his authority, he must document any such delegations in the Energy Risk Management Guidelines. <u>Table 3 below lists the authorized annual trading limits for broker fees per broker.</u>

Table 2: Authority Delegated to the CEO by the Board

Product	Term Limit	Maturity Limit	Volume Limit	Counterparty Limits	Who
Energy, Capacity, and CAISO Ancillary Services	Day Ahead and Real Time	N/A	As needed to meet SVCE's expected load obligations with the CAISO	Any counterparty	CEO
Gas	Daily	N/A	As needed to meet SVCE's obligations for gas tolls*	Through the counterparty associated with the toll	CEO
Energy(Power) Gas,, Capacity, CRRs, and Environmental Products	Up to 12 months	18 months	As needed to meet SVCE's expected load/gas toll *needs (per Purchasing Policy)	Any counterparty	CEO
	Up to 60 months	72 months	As needed to meet SVCE's expected load/gas toll* needs	Board-approved Master Agreements	CEO
	Over 60 months	As approved by Board	As approved by the Board	As approved by the Board	Board

^{*}natural gas hedges needed to manage risks associated with board approved natural gas tolling agreements

Table 3: Authority Delegated to the CEO by the Board for Brokered Transactions

<u>Transaction Type</u>	<u>Fiscal Year Limit</u>
Brokered Transactions Fees	\$500-K of broker fee expense
	<u>per broker</u>

6.5.3 Resource Adequacy Authority Delegated to the CEO by the Board

The CEO has the authority to meet resource adequacy requirements based on CPUC and CAISO guidelines. Failure to meet California's RA compliance obligations may subject SVCE to hefty penalties.

To adequately and effectively meet RA requirements, the CEO needs a broad authority to transact for terms of up to five years and with a broad set of suppliers, including counterparties not under a Master Agreement. Table 3-4 lists the CEO's authority for RA transactions, which maybe delegated provided proper documentation is established by the CEO.

Table 34: Resource Adequacy Authority Delegated to the CEO by the Board

Product	Term Limit	Maturity Limit	Volume Limit	Counterparty Limit	Who
Resource Adequacy	Up to 60 months	72 months	As required to comply	Any counterparty	CEO

6.5.4 Limits of Authority Delegated to Authorized Personnel by the CEO

The Front Office periodically prepares a needs assessment and develops a Portfolio Plan, which defines the transactions required to meet SVCE's needs and to remain within the Tolerance Bands of Section 6.4. The CEO must approve the Portfolio Plan and may delegate some of his authority to Authorized Personnel (as determined according to the process described in Section 6.1).

Although the CEO may delegate some of his authority to Authorized Personnel, the Board limits the authority he can delegate as shown in Table 4 Table 5 below:

Table 45: Limits of Authority Delegated to Authorized Personnel by the CEO

Product	Term Limit	Notional Value Limit <u>*</u>
Energy, Capacity, and CAISO Ancillary Services	Day Ahead and Real Time	As needed to meet SVCE's obligations with the CAISO
	Balance of the month	\$5 Million
Energy	Prompt month	\$7.5 Million
	Up to 12 months	\$25 Million
December Adequate	Prompt month	As needed to meet SVCE's obligations
Resource Adequacy Products, CRRs	Balance of compliance year Up to 12 months	As needed to meet SVCE's obligations \$15 Million
Environmental Products (Carbon Free and Renewable Energy Resources)	Up to 12 months	\$15 Million

*Notional value limits are inclusive of broker fees

6.6 Conflict of Interest

All SVCE employees who are involved in any aspect of transacting for energy or energy-related resources are prohibited from investing in any company with whom SVCE transacts, including those with whom it has executed enabling agreements. Prior to engaging in evaluation of, negotiation with, transacting with, or oversight of a transaction or potential transaction with any company, all involved employees must ensure that they are divested in direct holdings with that company. The ban on investment and requirement to divest is regardless of whether the investment would require disclosure on the employee's FPPC Form 700.

SVCE employees will sign notice acknowledging policy regarding conflict of interest and report any existing or potential conflicts of interest (see Appendix A).

7 Risk Management Policy Governance

7.1 SVCE Board of Directors

The SVCE Board is responsible for adopting this Policy and reviewing it as needed every two calendar years. The Board also approves SVCE's annual budget, contracting authorities and delegates responsibilities for the management of SVCE's operations to its CEO.

7.2 Risk Oversight Committee

SVCE's CEO formed the Risk Oversight Committee (ROC) and is responsible to inform the ROC about any risk management issues and to provide assurance that this Policy is implemented. The CEO shall provide the ROC information and analysis that illustrate that all transactions are consistent with the risk tolerances and that risk management controls and practices are sufficient to monitor and manage risks that SVCE is exposed to.

The ROC shall meet at least once per calendar quarter, or as otherwise called to order by the CEO.

The ROC shall from time to time review the Energy Risk Management Guidelines defining in detail the internal controls, strategies and processes for managing market risks incurred through or attendant upon wholesale trading, retail marketing, long-term contracting, CRR trading and load and generation scheduling. The ROC shall receive and review information and reports regarding risk management, wholesale trading transactions, and the administration of supply contracts. The ROC will also review counterparty credit lines and cash reserves to ensure proper levels are maintained for credit, operations and liquidity. In addition, the ROC shall review any instances of non-compliance with any provisions of the Policy or Guidelines.

7.3 Internal Risk Oversight Committee

The CEO formed the Internal Risk Oversight Committee (IROC) to review in more detail any risk management issues that arise. The IROC comprises members of the Front, Middle, and Back Office and is used to coordinate any activities related to transacting. The IROC regularly reviews SVCE's risks and risk management strategies and assists the CEO to ensure that proper controls are in place. The IROC is responsible to develop, approve and update Energy Risk Management Guidelines that implement the Energy Risk Management Policy.

8 Appendix A: Acknowledgement of ERM Policy, Declaration of Conflict of Interest and Trader Integrity Attestation

To:-

Acknowledgement of ERM Policy
I acknowledge that I've read, understand, and will comply with SVCE's Energy Risk Management Policy.
Declaration of Conflict of Interest
I understand that I am obligated to give notice in writing to Silicon Valley Clean Energy of any interest of relationship that I may have in any counterparty that seeks to do business with Silicon Valley Clean Energy and to identify any real or potential conflict of interest such counterparty has or may have with regard any existing or potential contract or transaction with Silicon Valley Clean Energy, within 48-hours of becoming aware of the conflict of interest.
I would like to declare the following existing/potential conflict of interest situation arising from the discharge of my duties concerning Silicon Valley Clean Energy activities covered by the scope of the ERN
a) Persons/companies with whom/which I have official dealings and/or private interests:
b) Brief description of my duties which involved the persons/companies mentioned in item a) above.
<u>Trader Integrity Attestation</u> – Please complete this section if you trade on behalf of SVCE
Yes No: Are you currently under investigation for market manipulation?
Yes No: Were you previously investigated for market manipulation?
163 No. Were you previously investigated for market manipulation:
Position and Name:
Signature:

Date:



Staff Report - Item 1f

Item 1f: Authorize the Chief Executive Officer to Amend Agreement with Power MC LLC for

Consulting Services

From: Girish Balachandran, CEO

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

Zakary Liske, Senior Manager of Power Operations

Date: 8/9/2023

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy Authority Board ("Board") authorize the Chief Executive Officer ("CEO") to amend agreement with Power MC LLC ("Consultant") for consulting services related to SVCE's business process optimization project to increase the not to exceed ("NTE") amount to \$424,184 and extend the term through September 30, 2024.

BACKGROUND

In 2021 as part of one of the five strategic focus areas, staff initiated a comprehensive assessment of SVCE's business processes to move the operations from a startup phase to more mature processes leveraging technology. The high-level goals of BPO are to create auditable, automated, secure, and integrated business processes. Currently, a small group of staff manages multiple large transactions with monthly cashflow that can in absolute terms reach over \$75 million using labor-intensive and manual processes along with reliance on core functions with outside vendors/consultants. With BPO tools, these processes will align with industry best practices of using Energy Trading and Risk Management ("ETRM") tools to streamline, automate and gain the ability to efficiently and effectively make insightful data-driven decisions. Staff created a BPO roadmap that currently has three phases of implementation with this being phase one that is focused on deal capture and settlements system. Phase 2 will focus on portfolio and risk management integrations and phase 3 will be defined later and could cover functions of customer relationship management, decarbonization program design and implementation, meter data and load forecasting, and financial management and modeling.

Staff developed detailed functional requirements of SVCE's needs in a deal capture and settlements system. Using these requirements, Staff reached out to several vendors to learn about their systems and potential fit for SVCE's needs. Using the knowledge gained from the initial assessment, staff developed a Request for Proposals (RFP) and released that to the public in early February 2022. The RFP was structured to allow firms to respond to either or both elements of deal capture and settlements systems. Ultimately, the RFP resulted in SVCE selecting Adapt2 Solutions, Inc to provide a deal capture and settlements system. A contract was negotiated, approved by the SVCE Board in September 2022, and executed in October 2022 with the project implementation starting several weeks later.

SVCE initially began the project with an implementation team made up of internal staff representing the various departments responsible for managing SVCE's wholesale portfolio. After several months of working on the project staff determined that the level of effort required necessitated seeking external assistance to help.

As such, SVCE entered into a consulting agreement with Consultant in May 2023 to provide support with respect to SVCE's implementation of business process optimization software. At the time, staff was expecting this to be a limited term engagement with an NTE just under the CEO's spending authority. The limited engagement would

Agenda Item: 1f Agenda Date: 8/9/2023

allow existing project team to utilize the external resource to expedite completion of the implementation. Key aspects that the Consultant would assist on included: project management, portfolio migration and gap analysis.

ANALYSIS & DISCUSSION

Staff is requesting to extend the term and increase the NTE of the agreement with Consultant to accommodate additional work that has materialized and staff departures since the agreement began in May 2023. Initially, Consultant was brought onboard to assist in managing ongoing project work and to provide subject matter expertise on software implementation. Several weeks after Consultant started, departure of key staff in 4PRO resulted in a department bandwidth shortfall. Given the project timeline sensitivity, delaying the project was not a feasible option, nor would be waiting to backfill positions. Further, the original limited assignments for Consultant, including portfolio migration and gap analysis, have been prolonged due to lack of SVCE staff time to collaborate and provide feedback during project.

With the extension of the agreement, Consultant will continue to serve as project manager, complete the portfolio migration, and perform gap analysis between SVCE's initial RFP requirements and the implemented software. Additionally, Consultant will assist on completing remaining system integrations, workflows, user training, and cutover from development to production phase.

STRATEGIC PLAN

Authorizing the CEO to amend the agreement will directly support Goal 3 of the Strategic Plan which is to "Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives".

ALTERNATIVE

If the Board does not delegate authority to the CEO, SVCE will face operational risk, due to potential lack of bandwidth given the already shorthanded 4PRO staffing situation.

FISCAL IMPACT

The recommendation results in an estimated fiscal impact of \$326,894. The total fiscal impact including the current agreement with Consultant is \$424,184 and is expected to be realized by the end of FY24. The proposed FY 2023-24 Operating Budget includes sufficient funds to cover consulting expenses including amending the agreement with Consultant.

ATTACHMENTS

- First Amendment to Agreement with Power MC LLC
- 2. Agreement with Power MC LLC

FIRST AMENDMENT TO AGREEMENT WITH POWER MC LLC

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency ("Authority"), and POWER MC LLC ("Consultant") entered into that certain agreement entitled BUSINESS PROCESS OPTIMIZATION effective on May 18, 2023, hereinafter referred to as "Original Agreement"; and

WHEREAS, Authority and POWER MC LLC 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 May 22, 2023, and shall terminate on September 30, 2024, 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 four hundred twenty-four thousand one hundred eighty-four dollars and no/100 (\$424,184.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

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

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 four hundred twenty-four thousand one hundred eighty-four dollars and no/100 (\$424,184.00), 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. Time and Materials (400 hours x \$235/hour)	\$94,000
2. Out of pocket expenses (reimbursable expenses to equal no morethan 3.5% of fees)	\$3,290
Total	\$97,290

Amended

Task	Estimated Budget	
1. Time and Materials (1744 hours x \$235/hour)	\$409,840	

2. Out of pocket expenses (reimbursable expenses to equal no more than 3.5% of fees)	\$14,344
Total	\$424,184

- 4. This Amendment shall be effective on August xx, 2023.
- 5. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.
- 6. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.

RECOMMENDED FOR APPROVAL
Monica Padilla, Director of Power Resources
RECOMMENDED FOR APPROVAL
Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME POWER MC, LLC	SILICON VALLEY CLEAN ENERGY AUTHORITY
TOWER MO, ELE	A Joint Powers Authority
By:	ř
Name:	By:
Title:	By: Name: Girish Balachandran
Date:	Title: Chief Executive Officer
	Date:
APPROVED AS TO FORM:	
AFFROVED AS TO FORM.	
Counsel for Authority	
Counsel for Authority	
ATTEST:	
Authority Clerk	

AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND POWER MC LLC FOR BUSINESS PROCESS OPTIMIZATION

THIS AGREEMENT ("Agreement"), is entered into this 18th day of May, 2023, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and POWER MC LLC, a California Limited Liability Company, whose address is 15056 Calle Verano, Chino Hills, CA 91709 (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 business process optimization upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1.• **TERM**

The term of this Agreement shall commence on May 22, 2023, and shall terminate on December 31, 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 ninety-seven thousand two hundred ninety dollars and no/100 (\$97,290.00) 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

- 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. <u>Intellectual Property Indemnification</u>. 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. <u>General Requirements</u>. 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. <u>Subrogation Waiver</u>. 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. <u>Failure to Secure or Maintain Insurance</u>. 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. <u>Additional Insured</u>. 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. <u>Sufficiency of Insurance</u>. 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. <u>Maximum Coverage and Limits</u>. 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. Dean Isa (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's General Counsel, 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. It is understood that Authority is 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 any documents Consultant provided to Authority, Authority shall notify Consultant of the request and the date that such records will be released to the requester unless Consultant obtains a court order enjoining that disclosure, Authority will release the requested information on the date specified.
- D. In the event Authority gives Consultant written notice of a "litigation hold" or request under the Public Records Act, then as to all data identified in such notice or request, Consultant shall, at no additional cost to Authority, isolate and preserve all such data pending receipt of further direction from the Authority.
- E. Consultant agrees to comply with the confidentiality and data protection provisions set forth in Exhibit "E," attached hereto and incorporated herein by this reference.
- 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: Dean Isa Power MC LLC 15056 Calle Verano Chino Hills, CA 91709

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. <u>INTEGRATED CONTRACT</u>

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. <u>CAPTIONS AND TERMS</u>

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. <u>AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS</u>

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. <u>COUNTERPARTS</u>; <u>FACSIMILE/PDF/ELECTRONIC SIGNATURE</u>

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**

RECOMMENDED FOR APPROVAL

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.

Docusigned by:

Amerita Single

Apple 1000 PE ABY

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME	SILICON VALLEY CLEAN ENERGY
Power MC LLC	AUTHORITY
By: Dean Isa Name: Dean Isa	A Joint Powers Authority By: Girish Balachandran
Title: Managing Member	Name: Girish Balachandran
Date: 5/17/2023	Title: Chief Executive Officer Date: 5/19/2023

Exhibit A Scope of Services

PMC shall begin working on this engagement immediately following SVCE's acceptance of this engagement letter. PMC will start gathering and reviewing all relevant project information and material related to the deal capture and settlement software solution including Adapt2's RFP proposal and resulting contract, initial and updated project management documentation, and any other project related material made available by SVCE. PMC should be provided access to the Adapt2 test and/or market simulation software platform with a brief introduction to the currently configured screens and functionality as well as access to SVCE's network to access and share project information and material. PMC shall meet with SVCE staff with detailed working knowledge of the current tools and business processes representing all impacted areas to gain an understanding of their current needs and future vision to better represent SVCE's interests throughout engagement activities and communications both internally and with Adapt2. PMC will use SVCE's list of prioritized requirements and any additional requirements uncovered during the working sessions with selected staff to identify the gaps from what Adapt2 is currently planning to deliver in the deal capture and settlements software platform. These gaps will be further evaluated to develop a plan to achieve SVCE's expectations from the software platform. PMC will also focus available time and broad industry knowledge and experience in the areas most impacted by SVCE's resource bandwidth constraints to keep the project progressing according to updated project timelines. In order to keep travel expenses at a minimum and to be more consistent with SVCE's current remote working environment, PMC shall primarily work on this engagement remotely from PMC's own facilities with occasional in person work performed at SVCE's facilities as required. SVCE agrees that PMC shall not be required to be onsite at SVCE facilities more than fifty percent of the total hours worked on under this Engagement Letter.

Exhibit B Schedule of Performance

PMC shall deliver a plan to implement the deal capture and settlement software platform according to SVCE's desired timeline. PMC shall work with SVCE and Adapt2 to develop and agree on a master set of requirements that better aligns Adapt2's commitment to SVCE's expectations. PMC shall develop new or update existing acceptance criteria to include user confirmation of the successful delivery of all agreed upon requirements. PMC shall develop tracking and reporting tools to effectively identify, manage, and communicate the project progress as well as any project issues and concerns. PMC shall develop and provide any other agreed upon material in support of SVCE during the engagement.

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 ninety-seven thousand two hundred ninety dollars and no/100 (\$97,290.00), 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. Time and Materials (400 hours x \$235/hour)	\$94,000
2. Out of pocket expenses (reimbursable expenses to equal no more than 3.5% of fees)	\$3,290
Total	\$97,290

Rates

Personnel	Hourly
Dean Isa	\$235.00

Invoices

Monthly Invoicing: In order to request payment, Consultant shall submit bi-weekly 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.• <u>COVERAGE</u>:

(1) Workers' Compensation:

Statutory coverage as required by the State of California.

(2) <u>Liability</u>:

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.

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 becoming aware of the occurrence; or, (ii) reimburse Authority for any costs in notifying the affected individuals; (d) in the case of Confidential Information, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the Confidential Information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Consultant's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Authority for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Authority in connection with the occurrence: (g) be responsible for recreating lost Data in the manner and on the schedule set by Authority without charge to Authority; (h) provide to Authority a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at Authority's request, provide to Authority a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by Authority, which shall be executed by Consultant and may be relied upon by Authority as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

- 7.• It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.
- 8.• Consultant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or

prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant's compliance with the terms of this Agreement.

- 9.• Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
- 10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority's written request, and at Authority's option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.
- 11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.
- 12. In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
- 13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.



Staff Report - Item 1g

Item 1g: Adopt Resolution Authorizing the CEO to Execute Amendment to Master Agreement

with Direct Energy Business Marketing LLC ("DEBM")

From: Girish Balachandran, CEO

Prepared Zak Liske, Senior Manager of Power Operations by: Bob Tang, Power Supply Program Manager

Monica Padilla, COO and Director of Power Resources

Date: 8/9/2023

RECOMMENDATION

Staff recommends the SVCE Board of Directors adopt Resolution 2023-14 to delegate authority to the Chief Executive Officer (CEO) to execute the Amendment to the Master Agreement (as defined below) with Direct Energy Business Marketing LLC (DEBM).

BACKGROUND

SVCE 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 November 2016, SVCE entered into a Master Agreement with DEBM to enable power supply transactions between DEBM and SVCE. In July 2020, DEBM was sold by its then parent company Centrica plc to NRG Energy, Inc. This Amendment to the Master Agreement with DEBM makes applicable changes to reflect the change in DEBM's parent company and conform the credit terms with the new parent company, NRG Energy, Inc.

ANALYSIS & DISCUSSION

The Amendment to the Master Agreement only makes applicable revisions to reflect the new parent company of DEBM and conform the credit terms to the new parent company NRG Energy, Inc. The Amendment does not in 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 Board may either execute this Amendment to the Master Agreement 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: 1g Agenda Date: 8/9/2023

Direct Energy Business Marketing, LLC

Direct Energy Business Marketing LLC, is an energy trading and marketing company doing business in the US and Canada. NRG Energy Inc., DEBM's new parent company, is a Fortune 500 company in the retail and wholesale energy services in the US.

The CEO requests authority to execute the Amendment to the Master Agreement as provided for in Attachment 1.

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 Amendment to the Master Agreement with DEBM, which would keep outdated information in the Master Agreement with adverse implications in case SVCE needs to invoke credit support provisions in the Master Agreement from the parent company.

FISCAL IMPACT

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

ATTACHMENTS

- 1. Resolution 2023-14 Delegating Authority to the Chief Executive Officer to Execute Amendment to the Master Agreement with Direct Energy Business Marketing LLC
- 2. Amendment to the Master Power Purchase and Sale Agreement with DEBM

RESOLUTION NO. 2023-14

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE AMENDMENT TO THE MASTER AGREEMENT WITH DIRECT ENERGY BUSINESS 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 has entered into an EEI Master Agreement with Direct Energy Business Marketing LLC in November 2016:

WHEREAS, Direct Energy Business Marketing LLC was sold by Centrica plc to NRG Energy Inc in July 2020 and thus the EEI Master Agreement with Direct Energy Business Marketing LLC requires an amendment to reflect the change of Direct Energy Business Marketing LLC's parent company from Centrica plc to NRG Energy Inc and conform credit support requirement to the new parent company;

WHEREAS, Silicon Valley Clean Energy desires to enter into an amendment to the Master Agreement with Direct Energy Business Marketing LLC and has agreed to terms and conditions of the amendment thereof.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED

that the Board delegates authority to the Chief Executive Officer to:

1. Execute the amendment to the Master Agreement with Direct Energy Business 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 Amended Master Agreement.

ADOPTED AND APPROVED this 9th day of August 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				

ATTEST:	Chair	
Secretary		

EEI AMENDMENT AGREEMENT

This EEI Amendment Agreement (this "<u>Agreement</u>"), dated as of July 14, 2023 (the "<u>Effective Date</u>"), is entered into by and between Direct Energy Business Marketing, LLC, a Delaware limited liability company ("<u>Direct</u>") and Silicon Valley Clean Energy Authority, a California joint powers authority ("<u>Counterparty</u>") (Direct and Counterparty are sometimes referred to in this Agreement as a "<u>Party</u>" or collectively as the "<u>Parties</u>").

RECITALS

WHEREAS, Direct, as successor in interest to Energy America, LLC, and Counterparty are parties to that certain Master Power Purchase and Sale Agreement, dated as of November 28, 2016, as may be amended from time to time (the "EEI");

WHEREAS, Direct and Counterparty have entered into one or more transactions pursuant to the EEI (collectively, the "<u>Transactions</u>"), which Transactions may be evidenced by one or more transaction confirmations (collectively, "<u>Confirmations</u>" and together with the EEI and any Transactions, the "<u>Counterparty Agreement</u>");

WHEREAS, pursuant to that certain Purchase Agreement, dated July 24, 2020 ("<u>Purchase Agreement</u>"), among Centrica plc ("<u>Centrica</u>"), NRG Energy, Inc. ("<u>NRG</u>"), Centrica Beta Holdings Limited and Centrica Gamma Holdings Limited, effective January 5, 2021, NRG has purchased, among other assets, all issued and outstanding equity interests of Direct (the "<u>DE Sale</u>"); and

WHEREAS, as a part of the DE Sale, the Parties desire to provide in this Agreement for, among other things, the amendment of the Counterparty Agreement.

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth herein, the Parties hereby agree to amend the Counterparty Agreement as follows:

ARTICLE I AMENDMENTS AND REPRESENTATIONS

- **1.1** <u>Certain Amendments to Counterparty Agreement</u>. As of the Effective Date, the Counterparty Agreement will be amended as follows:
 - (a) Party A's notice information on the Cover Sheet of the EEI is hereby deleted in its entirety and replaced with the following:

Name: Direct Energy Business Marketing, LLC ("Party A")

All Notices:

Street: 804 Carnegie Center

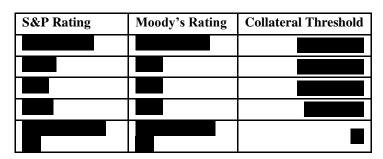
City: Princeton, NJ Zip: 08540
Attn: Contract Administration Phone: Facsimile: Email:
Invoices: Attn: Accounting – Physical Power Phone: Email:
Scheduling: Attn: Day Ahead Scheduling Phone: Facsimile: Email:
Payments: Attn: Accounting – Physical Power Phone: Email:
Wire Transfer:
Credit and Collections: Attn: Director, Credit Risk Phone:
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Assistant General Counsel - Commercial Phone: Facsimile: Email:

(b) References, if any, to "Centrica plc" or words of similar import in the Counterparty Agreement, including, without limitation, as credit support provider, Guarantor, or the parent of Direct, or similar provisions, shall be deleted, and, to the extent NRG has provided a guaranty or other credit support, shall be replaced with appropriate references to "NRG Energy, Inc., a Delaware corporation"; provided, however, any

obligation to provide financial statements of Centrica will be deemed to instead require the delivery of the publicly available audited annual consolidated financial statements of NRG, certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the applicable jurisdiction; provided, that if such financial statements are available on "EDGAR" or NRG's corporate websites, such obligation will be deemed to have been satisfied.

- (c) Counterparty accepts as of the Effective Date NRG as the ultimate parent of Direct and Guarantor of Direct under the Counterparty Agreement, if applicable, irrespective of any credit rating, financial requirements, thresholds or any other provisions to the contrary in the Counterparty Agreement.
- (d) Party A Collateral Threshold in Section 8.2(c) of the Cover Sheet of the EEI shall be changed from to the following:

Party A Collateral Threshold:





(e) References to Guarantor and Guarantee Amount in Section 8.2(e) of the Cover Sheet of the EEI shall be deleted.

1.2 Representations and Warranties.

- (a) As of the Effective Date, each Party represents and warrants to the other Party that:
 - i. its execution, delivery, and performance of this Agreement do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets, or any contractual restriction binding on or affecting it or any of its assets; and
 - ii. its obligations under this Agreement constitute its legal, valid and binding obligations enforceable in accordance with their respective 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).

(b) As of the Effective Date, the Counterparty represents and warrants to the other Party that it has made no prior transfer or assignment (whether by law of security or otherwise) of any interests, rights, or obligations in or under the Counterparty Agreement or Transactions, except in accordance with the terms thereof, nor will it make any transfer or assignment of any interests, rights or obligations in or under Counterparty Agreement or Transactions prior to the Effective Date except in accordance with the terms thereof.

ARTICLE II MISCELLANEOUS

- **2.1** <u>Counterparts</u>. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by electronic communication and PDF), each of which will be deemed an original.
- 2.2 <u>Notices</u>. Any notice required or authorized by this Agreement to be given to a Party shall be given in writing and shall be sufficiently given if delivered by electronic mail to the address set forth below or to such other address as such Party may designate for itself by prior notice given in accordance with this Section. Any such notice shall be effective only upon receipt thereof, provided that such notice is received during the normal business hours of the addressee, and if not received during such normal business hours, then on the first business day following such receipt. The address for the delivery of the notices to each Party and the respective telephone number are as follows:

Notices to Counterparty:

Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 Attn: Girish Balachandran

Phone: Email:

Notices to Direct:

NRG Energy, Inc. 804 Carnegie Center Princeton, NJ 08540

Attention: Contract Administration

Facsimile: Telephone:

2.3 <u>Costs and Expenses</u>. The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation,

preparation and the execution of this Agreement and any of the actions contemplated hereunder.

- **Amendments**. Except for any amendment to the Counterparty Agreement made pursuant to this Agreement, all terms and conditions of the Counterparty Agreement will continue in full force and effect in accordance with its provisions and all provisions of the Counterparty Agreement shall, as applicable, be deemed to be amended consistent with the terms of this Agreement. No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by electronic communication or PDF) and executed by each of the Parties. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise of any other right, remedy, power or privilege.
- **2.5** Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind among or between the Parties, each Party being individually responsible only for its obligations as set forth in this Agreement.
- **2.6** Governing Law. This Agreement will be governed by and construed in accordance with the law of the State of New York without reference to the conflict of laws provisions thereof.
- **2.7** <u>Headings</u>. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- **2.8 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- **2.9** <u>Successors and Assigns</u>. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party to this Agreement may assign its rights or obligations hereunder without the prior written consent of each other Party, which consent shall not be unreasonably withheld or delayed.
- **2.10** Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

Direct Ene	ergy Business Mar	keting, LLC
-		
Nan	ne:	
Title	e:	
Date	e:	
Silicon Val	lley Clean Energy	Authority
By:		
Name	: :	
Title:		
Date:		



Staff Report - Item 1h

Item 1h: Receive Q2 2023 Decarbonization Programs Update

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy

Nupur Hiremath, Manager of Community Programs

Alhad Dighe, Fleet Electrification Fellow

From: 8/9/2023

RECOMMENDATION

Staff recommends the Board accept the Q2 2023 Update of the Decarbonization Strategy & Programs Roadmap.

BACKGROUND

To achieve its mission to reduce dependence on fossil fuels by providing carbon-free, affordable and reliable electricity and innovative programs for the community, SVCE established a decarbonization strategy and programs roadmap (abbv. "Roadmap"). In December 2018, the Board approved the Roadmap, and since that time, staff have been working on implementation.

ANALYSIS & DISCUSSION

Attachment 1 is the most recent quarterly update, covering April through July 2023. The quarterly update includes a table with a summary of updates and next steps for each initiative.

STRATEGIC PLAN

This item supports SVCE's 2021-2022 Strategic Plan Goal 8, to "coordinate development of decarbonization strategy, lead design of local policy and programs, and support program deployment," to support achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030.

FISCAL IMPACT

Accepting the Q2 2023 Update of the Decarbonization Strategy & Programs Roadmap has no fiscal impact.

ATTACHMENTS

1. Decarbonization Strategy & Programs Roadmap – Q2 2023 Update



Quarterly Report Q2 Milestones



contractors trained through FutureFit Fundamentals program.

34.5

active residential incentive reservations in the FutureFit Homes program.



Quarterly Report

Active Programs

FutureFit Fundamentals Contractor Training

Nearing goal of 150 contractors completed training. (102 as of June 2023)

Next Quarter:

Working on new graduate bonus.

FutureFit Homes and Buildings - C&I Incentives

Building electrification rebates launched for small and medium business customers in July.

Next Quarter:

Continue program roll out.

Reach Codes 2.0

Worked with concerned member agencies on updating draft contingency codes.

Next Quarter:

Respond to and support member agencies as needed.

Electrification Rate Discount

TOU-based discount structure and E-ELEC rate were opened to NEM customers. Reached 500 enrolled customers.

Next Quarter:

Experiment with targeted approach to enrolled customers.

Community Energy Resilience

Continuing to support member agencies with selecting capex projects.

Next Quarter:

Execute grant agreements with remaining member agencies

Electric Showcase Awards 2.0

Selected and notified award winners and honorable mentions.

Next Quarter:

Work with winners on promotional materials.

FutureFit Homes - Residential Incentives

345 active reservations, ~\$1.4M reserved, 165 rebate claims (\$446K). Revised the pathway for emergency replacements.

Next Quarter:

Continue promotion of program and increase uptake.

Silicon Valley Transportation Electrification Clearinghouse

Worked to re-shape program.

Next Quarter:

Plan meeting for policy and pricing mechanisms for multifamily developments. Host meeting with stakeholders.

CALeVIP 1.0

Processed applications to full reserve funding before program end date of July 31.

Next Quarter:

Continue with completing existing projects with reserved funds.

Priority Zone DC Fast Charger (PZDCFC) 2.0

Executed agreements with 4 DCFC sites. Prepared process for milestone payments.

Next Quarter:

Monitor site construction progress and milestones.

FutureFit Assist

Amended contract with vendor for next phase of program.

Next Quarter:

Expand marketing to reach small and medium business customers.

Fleet Electrification Program

Facilitated 5 public fleets through program. Fleets in varying stages of completion.

Next Quarter:

Continue to identify private fleets and facilitate fleets through program.



Quarterly Report

Active Programs

CHIIP

Up to 19 active reservations with ~\$882K in funding. First claim received.

Next Quarter:

Expand enrollment for program.

GridShift: EV Charging

Launched charger rebate and continued marketing efforts
Launched Critical GridShift Hours in July for grid stability.

Next Quarter:

Continue program marketing and enrollment.

Customer Resource Center (eHub)

Launched Electric Yard Care, Go Electric Summer campaign, Summer Resiliency promotion.

Next Quarter:

Launch and market summer-ready appliances promotion.

Decarbonization Demonstration Grants

Continue Grant Administration

Next Quarter:

Receive first quarter progress reports.

Decarbonization Engagement Grants

Continue Grant Administration.

Next Quarter:

Receive first quarter progress reports.

Lights On Silicon Valley

Worked on SVCE's vision for the "grid of the future" to shape future VPP efforts and program designs.

Next Quarter:

Sunrun coordinating with 4PRO to manage aggregated solar + storage systems.

Medical Battery Program

Expanded program eligibility and conducted additional marketing to increase program participation.

Next Quarter:

Continue program implementation.



Quarterly Report

Programs in Development

FutureFit Homes - Concierge

Concierge vendor selected (SMUD). Began program design.

Next Quarter:

Continue planning and designing program.

Tariffed On Bill (TOB) Financing

CPUC decision issued in June, which highly favors SVCE's TOB proposal. Worked to respond CPUC comments.

Next Quarter:

Continued working with TECH team to advance SVCE's pilot program proposal through CPUC's process.

Permit Modernization

Completed building official and contractor interviews.

Next Quarter:

Finalize report and plan next steps internally.

Multifamily Direct Install

Released RFP for program operator to assist with program design and planning.

Next Quarter:

Select program operator. Begin stakeholder engagement.

Silicon Valley Building Electrification Strategic Taskforce

Program design and stakeholder engagement for BE colaition.

Next Quarter:

Continue stakeholder mapping and engagement.

Existing Building Policy Experimentation

Completed stakeholder meetings and began working on program design.

Next Quarter:

Program design will be approved and initial implementation outreach to communities will be conducted.

Feasibility Assessment of Natural Gas Phase Out by 2045

Next Quarter:

Finalize the SOW, partner with PCE to ensure regional consistency. Set up working group with other Bay Area CCA's and BAAQMD.

Closed/Inactive Programs

Reach Codes 2019

Reach Codes 2019 were adopted by 12 of 13 member agencies. Several agencies updated Reach Codes in the 2022 code cycle.

FutureFit Homes Heat Pump Water Heater 2.0

Program closed in December 2022. Active applications were transitioned to FutureFit Homes Incentives program.

Innovation Onramp

The final pilot from 2021 with NeoCharge was completed in May 2023. Future program pathway is being determined.



Active Programs Glossary

CALEVIP 1.0: Incentives for L2 and DCFC publicly-accessible EV chargers funded by California Energy Commission and SVCE as a part of a regional collaboration.

CHIP: Incentive program for L1 and L2 EV charging at hard-to-reach multifamily properties.

Community Energy Resilience: Resources (grants) and tools for member agencies to increase individual and collective capacity to adapt to future power outages.

Customer Resource Center (eHub): Online customer resource center and marketplace to enable engagement, education, and action related to clean electricity, EVs, and home electrification.

Electric Showcase Awards 2.0: Award program to recognize residential, commercial, and non-profits who are early adopters of existing building electrification.

Decarbonization Demonstration Grants: Grants to encourage member agencies and other key groups an opportunity to electrify their facilities. Focus on projects with public visibility for education/awareness purposes.

Decarbonization Engagement Grants: Grants for member agencies and other key groups to work on smaller electrification engagement initiatives to engage their communities.

Electrification Rate Discount: Custom rate to promote building electrification.

Existing Building Policy Experimentation: Assess and support potential policy levers that member agencies can explore to mitigate emissions from existing buildings.

Feasibility Assessment of Natural Gas Phase Out by 2045: Feasibility study to identify technical, legal, and economic barriers and opportunities for phasing out natural gas service by 2045 in SVCE's service territory.

Fleet Electrification Program: Competitive application for SVCE's fleet electrification planning support and funding for site upgrades targeting a broad set of fleet types.

FutureFit Assist: Technical assistance for preliminary site design and pertinent rebates for charging at multifamily housing and small and medium workplace properties.

FutureFit Fundamentals Contractor Training: Training and financial incentive program for contractors to expand their knowledge and installation of electrification technologies.

FutureFit Homes - Concierge: Comprehensive one-on-one phone or web assistance to SVCE customers to assist them in applying for electrification incentives, technical assistance, or developing a whole-home electrification plan.

FutureFit Homes - Residential Incentives: Incentives for various building electrification technologies for single- and small multi-family residential customers. Includes major appliances as well as eventual gas meter removal.

FutureFit Homes and Buildings - C&I Incentives: Incentives for demonstration projects at a handful of small and medium business properties.

GridShift EV Charging: Managed EV charging phone app that optimizes charging to reduce associated costs and emissions. Includes incentives for reducing grid peak demand.



Active Programs Glossary

Lights On Silicon Valley: Provide incentives for enrolling solar and battery systems in the SVCE grid services program.

Medical Battery Program: Pilot program to deploy ~50 portable batteries to qualified customers who rely on power for medical equipment.

Multifamily BE & TE Direct Install: Comprehensive building and transportation electrification retrofits with a direct installer for multifamily affordable housing sites.

Permit Modernization: Benchmark and streamline member agency permitting and inspection processes to identify barriers and opportunities to electrification.

Priority Zone DC Fast Charger (PZDCFC) 2.0: Competitive grant application for DCFC installations in "priority zones" that support designated multifamily housing clusters.

Reach Codes 2.0: Provide model building energy codes supportive of all-electric design and EV infrastructure to member agencies along with consultant support.

SVBEST: Regular regional stakeholder convenings to coordinate program alignment across building decarbonization workstreams.

SVTEC: Regular regional stakeholder meetings focused on information sharing, solving critical issues, and attracting external funding to the SVCE community in support of EV infrastructure deployment.

Tariffed On Bill (TOB) Financing: Equitable financing pilot program for electrification for low-moderate income residents focusing cost recovery through on-bill charges that are lower than bill savings.

View our active rebates here.



Staff Report - Item 1i

Item 1i: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Tina Walia, Executive Committee Chair

Date: 8/9/2023

The Executive Committee met June 23, 2023 and considered staff's request for the Executive Committee to recommend the SVCE Board of Directors ratify broker transaction expenses for past commodity purchases, a request for the committee to recommend the Board of Directors approve the amended Energy Risk Management Policy, and the committee heard updates from staff on the FY 2023-24 budget framework and the medical baseline battery pilot.

Zak Liske, Senior Manager of Power Operations, presented the item requesting the Executive Committee's support in recommending the Board of Directors ratify broker transaction expenses for past commodity purchases. Staff identified SVCE's Purchasing Policy, FP6, limits not-to-exceed maximum dollar amount to \$100,000 per vendor per fiscal year and noted broker expenses for past commodity transactions totaled over ~\$357,000. For past transactions, staff recommended that, to the extent the transactions exceed the CEO's authority, the Executive Committee recommend that the Board ratify these past broker expenses. The committee discussed the charges, specifically the amount to be ratified and if the ask should identify the exact amount or if it should be a higher number to allow some cushion. For the vote, the committee supported staff's recommendation for the Executive Committee to recommend the Board of Directors ratify these broker expenses in an amount totaling \$357,515.55, with an option to increase this amount if needed.

Karthik Rajan, Senior Risk Manager, provided information on the proposed amendments to SVCE's Energy Risk Management policy which included enhanced approved product provisions for executing gas transactions for potential hedging of peaking resources like Middle River transactions; enhanced delegation of authority accounting for gas transactions, and accounting for brokerage cost (mainly for RA transactions); and a streamlined process for authorized personnel acknowledgements. The committee discussed these proposed amendments in greater detail and if the item would be appropriate to place on the Consent Calendar or regular calendar at the Board of Directors meeting; following this discussion, the committee was in consensus for the item to be placed on the Consent Calendar. For the vote, the committee supported staff's recommendation for the Executive Committee to recommend the SVCE Board of Directors approve revisions to SVCE's Energy Risk Management policy as presented by staff.

Amrit Singh, CFO and Director of Administrative Services, presented an update on SVCE's FY 2023-24 Budget framework and preliminary budget forecast, noting the final budget numbers would be developed using July's latest energy price market data. The Committee suggested comparing SVCE's full-time staff numbers with those of other CCAs, and discussed removing the request to transfer funds towards an SVCE building purchase if margin projections deteriorated further.

Raul Hernandez, Senior Marketing Specialist, provided a presentation with an overview of SVCE's Medical Baseline Battery Pilot program, which was created to provide 50 free backup batteries to SVCE customers who require electricity for medical devices and are at higher risk of possible power outages.

Agenda Item: 1i Agenda Date: 8/9/2023

Materials from this meeting can be found on SVCE's website: <u>SVCE Executive Committee Meeting</u>, <u>June 23</u>, <u>2023</u>

The July meeting of the Executive Committee was cancelled, and the committee did not meet. The next meeting of the Executive Committee is scheduled for August 25, 2023 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report - Item 1j

Item 1j: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Hung Wei, Finance and Administration Committee Chair

Date: 8/9/2023

The Finance and Administration Committee met August 1, 2023 and received a presentation from staff requesting the committee recommend that the SVCE Board of Directors approve the proposed FY 2023-24 operating budget and support changing the reserve policy to increase the days of cash on hand from a target of 285 days cash on hand to 300 days cash on hand.

Amrit Singh, CFO and Director of Administrative Services, presented the proposed fiscal year 2023-2024 budget, which showed a potentially positive financial year, though results are uncertain due to the impact of energy price volatility in revenues. Highlights included a recommendation to keep the current customer discount rate of 4% and revisit in December when there is more certainty on PG&E rates, the addition of nine full-time positions, and a contribution to reserves of approximately \$7.7 million. The committee discussed reserve targets and increasing the target of current days of cash on hand from 285 to 300, and delaying decisions on additional funding for programs or set aside for a building fund. The committee supported staff taking initial actions to be prepared to purchase a space in a building if opportune circumstances presented itself. The Finance and Administration Committee voted in support of staff's request to recommend the proposed FY 2023-24 operating budget and increasing the days of cash on hand to a target of 300 days cash on hand from the current 285.

Materials from this meeting can be found at the following link: <u>SVCE Finance and Administration Committee</u> Meeting, 8/1/23.

The next Finance and Administration Committee meeting will be scheduled based on committee member availability.



Staff Report - Item 1k

Item 1k: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 8/9/2023

Per direction from the SVCE Board on December 9, 2020 for the CEO to provide a report of the ongoing activities of California Community Power (CC Power) after each of its meetings, this is to report CC Power held a regular board meeting on Wednesday, June 21, 2023 and adjourned the July 19, 2023 meeting.

Attached is a summary report from General Manager Alex Morris; materials from the June board meeting can be found here on the CC Power website: CC Power Meeting, 6/21/23

The next meeting of the board will be August 16, 2023 at 1:00 p.m.; meeting materials can be found on the CC Power website: https://cacommunitypower.org/meetings/

ATTACHMENTS:

1. CA Community Power Board Meeting Summary from General Manager Alex Morris, June 21, 2023

California Community Power

901 H St, Ste 120 PMB 157, Sacramento, CA 95814 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 6/21/2023

FROM: Alex Morris – General Manager

SUBJECT: Report on CC Power Regular Board of Directors Meeting – June 21, 2023

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, June 21, 2023, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: Meetings and Agendas - ca community power

Highlights of the meeting included the following:

- Matters subsequent to posting the Agenda. None.
- **Public Comment.** None.
- **Consent Calendar** The Board approved the following items:
 - Minutes of the Regular Board Meeting held on March 15, 2023. (Re-approved after a technical issue at the April Board Mtg.)
 - o Minutes of the Regular Board Meeting held on April 19, 2023
 - Acknowledgement of Receipt and Review of 2021 and 2022 Audit of the Financial Statements of CC Power
 - o The Initial Draft of CC Power Benefits Plan
 - Amendment to General Manager Employment Agreement to Update the Benefit Components of the Agreement
 - Delegation of Authority to General Manager to Hire a Resource Planning Manager
- Approval of Strategic Actions Towards Offshore Wind Request for Offers The Board approved a suite of actions designed to advance CC Power's expected future pursuit of Offshore Wind capacity and contracts. These actions include compiling a plan on timing and MW amounts for a future RFO, targeted for 2025-2027. The RFO will inform developers on timing and size of contracts, such that they may take steps to further prepare themselves for contracting. Additional actions related to exploring pilots, learning best practices from other areas of offshore wind development, collaborating and engaging with community members and stakeholder groups, recommending actions for the state regarding ports, supply-chain, and permitting, informing transmission build-out through Integrated Resource Plans, and exploring possible pilots were also identified as strategic actions as approved. CC Power will update the board following this resolution at future Board meetings.
- General Manager Update regarding Operating Structures and Workplans the Board reviewed progress to date in establishing working groups, project advisory subcommittees, and other activities and new tools designed to respond to the CC Power Strategic plan,

approved in December 2022. These operational processes, tools, and norms, all support the ongoing operations of CC Power and better enable efficient participation from member-CCAs. The main working groups include: Resource Planning Working Group, Shared-Services Working Group, and Customer Programs Working Group.

- **Discussion of Inflation Reduction Act Project** The Board discussed a project to strategically assess the Inflation Reduction Act so as to inform possible strategic actions CC Power may wish to pursue. Such actions may include ownership of resources, procurement of specific technologies or projects with specific benefits, or development of customer programs enabled by Inflation Reduction Act benefits. This work-effort will occur primarily from July September. No vote was taken.
- Decision to Commend and Thank Jan Pepper for her Service to California Community Power The Board approved a resolution to recognize Jan Pepper for her service, leadership, and contributions. Jan will partially retire by July 1 and will end her service on the CC Power Board. Jan was recognized as a first mover and key leader in the CCA space.
- Decision to Commend and Thank Tim Haines for his Service to California Community
 Power The Board approved a resolution to recognize Tim Haines for his service,
 leadership, and contributions. Tim completes his time with CC Power on June 30th, and was
 recognized for helping shepherd CC Power through a major growth and development phase
 in which four contracts for 200+ MW were signed.

Other items

The Board expressed interest in CC Power's planned September 29, 2023
 Workshop, "Getting It Built Right", where CC Power will welcome feedback and dialogue with stakeholders on what may be involved in project success.



Staff Report - Item 11

Item 11: Legislative Response to Industry Transition 2023 Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Yvonne Martinez Beltran, Committee Chair

Date: 8/9/2023

The Legislative Response to Industry Transition 2023 Ad Hoc Committee held its second meeting on June 21, 2023. The committee received information from staff on the state budget and discussed priority legislation aligned with SVCE's 2023 Legislative Policy Platform.

The next meeting of the Committee is expected to be held in the fall and will be scheduled based on member availability.



Staff Report - Item 1m

Item 1m: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 8/9/2023

There is no report for the Audit Committee as the committee has not met since February 16, 2023; the next meeting of 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: 8/9/2023

REPORT

Staff Updates

Joseph (Joey) Lande joined SVCE June 20, 2023 as an Energy Services Principal. Joey comes to SVCE most recently from Marin Clean Energy (MCE), where he led the programs team in developing and implementing innovative and exciting energy efficiency and demand flexibility programing. He has a master's degree in Environmental Science from the central European University in Hungary and a deep background of experience in energy, program design, and sustainability.

Colleen McCamy started as SVCE's new Associate Data Scientist on July 17, 2023. She will be supporting the team by advancing strategic and exploratory analysis for data-driven decisions that contribute to SVCE's mission. Most recently, Colleen received a Master of Environmental Data Science from the Bren School of Environmental Science & Management at UC Santa Barbara where she explored the potential for co-locating utility-scale solar PV at existing wind resources in the U.S. Colleen has been part of the SVCE team since September 2018 starting as Climate Corps Fellow and since then held various roles within the Energy Services and Community Relations Department.

Personnel Officer Update

Since the June Board meeting, SVCE has filled the Energy Services Principal and Associate Data Scientist positions. There are currently five open recruitments: 1) Power Resources Planner, 2) Regulatory Analyst/Senior Regulatory Analyst, 3) Power Resources Manager, 4) Director of Human Resources, and 5) Information Technology Analyst. Please help us spread the word and direct any interested candidates to SVCE's website: https://svcleanenergy.org/jobs/

Staff is gearing up for our fourth in-person retreat of the year on August 10th and 11th; the focus of this retreat is "2023 Workplan Focus and Overview of Upcoming Years".

CEO Agreements Executed

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

- 1) SMUD, Amendment to Task Order: SMB Program Support, not to exceed \$264,000
- 2) Enervee, Amendment: Master Subscription Agreement, extends term to 9/30/24
- **3)** City of Monte Sereno, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$500,000, term ends 12/31/24
- 4) PFM Asset Management, Amendment: Investment Advisory Services
- **5)** City of Mountain View, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$70,000, term ends 12/31/24
- **6)** City of Mountain View, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$497,000, terms ends 12/31/24

Agenda Item: 2 Agenda Date: 8/9/2023

- **7)** SMUD, Agreement: Electrification Concierge Consultant Services, not to exceed \$892,059, 6/21/23-8/27/26
- 8) SEI, Amendment: Climate Corps Fellow Hosting Services, not to exceed \$184,765, 9/1/22 12/31/23
- **9)** ClearResult Consulting, Amendment: Electric Vehicle Technical Assistance, no to exceed \$725,000, extends term to 12/31/23
- **10)**City of Campbell, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$500,000, term ends 12/31/24
- **11)**City of Sunnyvale, Grant Agreement: Decarbonization Grant Program Agreement, not to exceed \$500,000, term ends 12/31/24
- **12)**Raimi & Associates, Amendment: Electrification Policy Experimentation Program Design, extends term to 10/31/23
- 13) ADM, Amendment: Customer Awareness Survey and eHub Evaluation, not to exceed \$105,930
- 14) Tedesco & Associates, Agreement: Recruitment Services, not to exceed \$60,000
- **15)**Autogrid Systems, INC., Agreement: Demand Response Program, not to exceed \$90,000, 7/14/23-7/13/24
- **16)**CC Power, Agreement: Marketing/Comms Support, Website Services and IT Support, not to exceed \$31,000 (SVCE to invoice for work done)



CEO Power Supply Agreements Executed

Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value
SDG&E	6/6/2023	Purchase	Resource Adequacy	8/1/2023	9/30/2023	\$1,491,000
High Desert Power	5/25/2023	Purchase	Resource Adequacy	5/1/2024	5/30/2024	\$650,000
3Phases	6/1/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$540,000
Southern California Edison	6/2/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$1,500,000
Sonoma Clean Power	6/2/2023	Purchase	Import Allocation Rights	8/1/2023	8/31/2023	\$45,000
Peninsula Clean Energy	6/5/2023	Purchase	Import Allocation Rights	8/1/2023	8/31/2023	\$92,000
Shell North America	6/9/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$189,000
East Bay Community Energy	6/8/2023	Sale	Resource Adequacy	8/1/2023	8/31/2023	\$1,680,000
East Bay Community Energy	6/8/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$1,708,000
East Bay Community Energy	6/8/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$240,000
Direct Energy	6/6/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$1,300,000
Direct Energy	6/1/2023	Purchase	Import Allocation Rights	8/1/2023	8/31/2023	\$36,000
Bonneville Power Authority	6/14/2023	Purchase	Resource Adequacy & ACS	8/1/2023	8/31/2023	\$6,544,800
PG&E	6/15/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$1,380,000
Southern California Edison	6/15/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$1,525,000
San Diego Community Power	6/27/2023	Sale	Resource Adequacy	8/1/2023	8/31/2023	\$1,144,000
Saavi Energy	5/4/2023	Purchase	Resource Adequacy	5/1/2024	10/31/2024	\$8,295,000
Clean Power Alliance	6/13/2023	Purchase	Resource Adequacy	8/1/2023	8/31/2023	\$2,440,000
East Bay Community Energy	6/21/2023	Purchase	Resource Adequacy	9/1/2023	9/30/2023	\$390,000

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

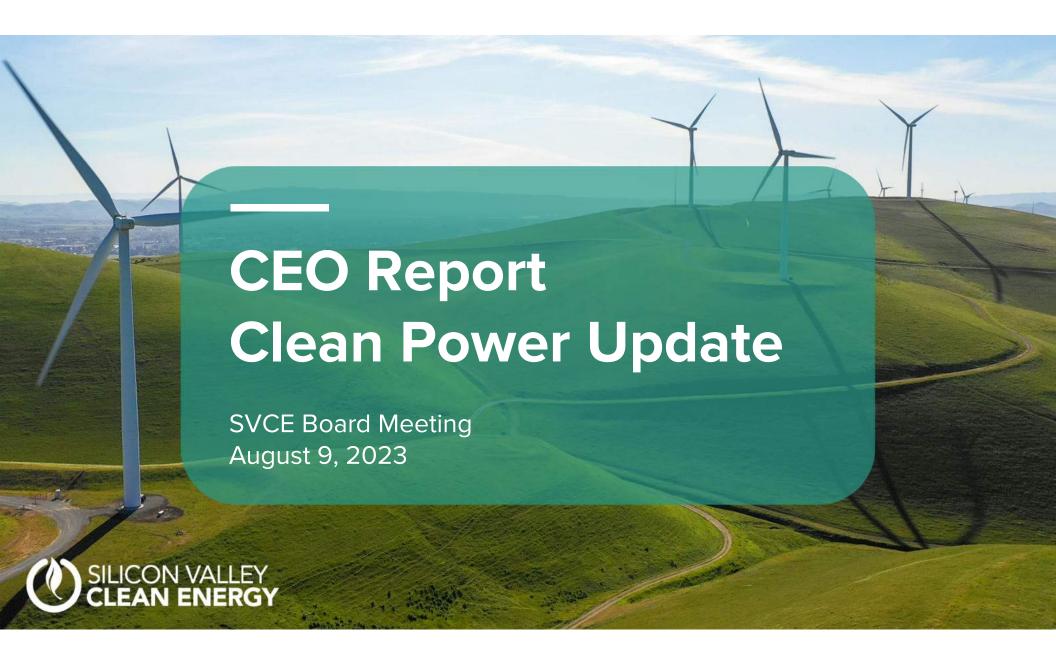


Presentations & Relevant Meetings Attended by CEO

- Participated in CalCCA Monthly board, executive, and legislative meetings
- CC Power Board Meeting, June 21, 2023 (General Manager report is on Consent Calendar)

ATTACHMENTS

- 1. Clean Power Update, August 2023
- 2. Decarb Programs & Policy Update, August 2023
- 3. Energy Services & Community Relations Update, August 2023
- 4. Regulatory and Legislative Update, August 2023
- 5. Agenda Look Ahead, August December 2023





(1) 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

7 Projects now delivering to SVCE meeting ~33% 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
- Yellow Pine Solar + Storage July 2023

SVCE Long-Term Clean Energy Contracts

					Storage	Approximate % of Annual load		Lifetime Not to Exceed Authority	SVCE Board	
	Seller	Project Name	Technology	Generation MW	MW	in 2025	Term (years)	(MM\$)	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	Online
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	ОМЕ	Fish Lake	Geothermal	1.82		0.4%	20	\$30	Jun-22	In-development



Clean Energy Resources Online Progress as of 7/27/2023

2023 - Q2

- Angela Solar + Storage *Pre-construction delayed*
- Aratina Solar + Storage Pre-construction delayed

2023 - Q3

 Yellow Pine Solar + Storage – Achieved Commercial Operation in CAISO

2023 - Q4

• San Luis West Solar + Storage - Pre-construction - delayed

2024 - Q1

• Victory Pass Solar + Storage – *Construction mode – delayed*

2024 - Q2

• FCR: Fish Lake Geothermal – Pre-construction

2025+

- FCR: Ormat Geothermal *Pre-construction*
- LDS: Goal Line and Tumbleweed Pre-construction
- Atlas Solar Pre-construction delayed

THANK YOU!



PROGRAMS AT A GLANCE

POWER SUPPLY	C&I Clean Power Offerings
	FutureFit Fundamentals
	FutureFit Heat Pump Water Heater
	Permit Modernization
	Resilience at Community Facilities
	Medical Baseline Battery Program
	CRCR Bill Relief
BUILT	Reach Codes
ENVIRONMENT	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
	CA Electric Vehicle Infrastructure Project (CALeVIP)
	Future Fit Assist
	Multifamily EV Charging Installation Incentive Program Multifamily EV Charging Direct Install
MOBILITY	Priority Zone DCFC
	SV Transportation Electrification Clearinghouse (SVTEC)
	Fleet Electrification Program
GRID	GridShift EV Charging
INTEGRATION	Lights On Silicon Valley
	Other Virtual Power Plant
	Customer Resource Center (eHub)
EDUCATION &	Data Hive
OUTREACH	Building Decarbonization Demonstration Grants
	Decarbonization Engagement Grants



DPP

JULY HIGHLIGHTS



\$50 off Electric Appliances to Get You Summer-Ready



Silicon Valley Clean Energy (SVCE) customers can get \$50 off portable power stations, smart thermostats, evaporative coolers, and air purifiers on the <u>Appliances Assistant</u>. These electric appliances are designed to optimize your energy usage and elevate your summer experience in the comfort of your home. Portable power stations ensure backup power supply, smart thermostats offer precise temperature control, air purifiers improve indoor air quality, and evaporative coolers offer a cooling solution for homes without central air. Together, they create an environment that keeps you cool, comfortable, and content during the warmest months of the year. Learn more here.



Multi-Family Direct Install Program Coming in 2024

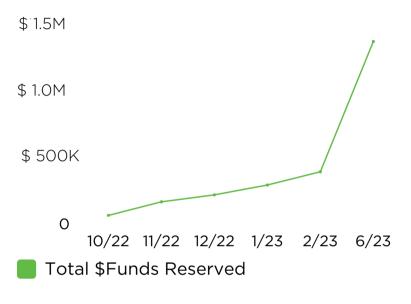
SVCE will be launching a new \$12.5 million program that provides existing deed-restricted affordable multifamily properties with nocost electrification retrofits. Through a recently issued request for proposals (RFP), SVCE is seeking a program operator and team of contractors to assist with program design, develop electrification plans, and perform the retrofit upgrades. SVCE also plans to engage key stakeholders in the affordable housing realm to inform program design prior to the launch of this program in 2024.

This program aims to offer a cohesive "one stop" solution to multifamily properties that may otherwise find it difficult to electrify by only leveraging incentives.

ONGOING METRICS

Future Fit Homes

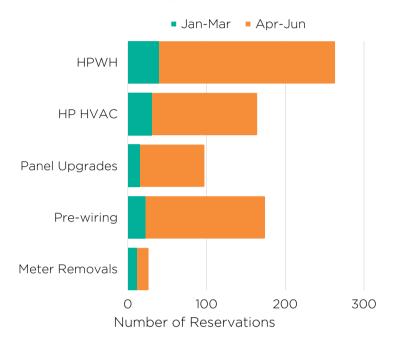
Provide incentives to residents for electric heat pump water heaters (HPWH), heat pump HVAC systems, service panel upgrades, and pre-wiring upgrades to replace gas appliances.



Rebates claimed*: \$446K

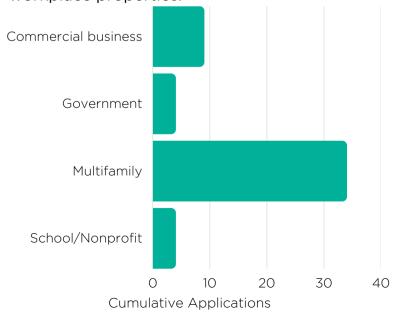
Rebates reserved: \$1.37M

*Under old program FY20** -2022



Future Fit Assist

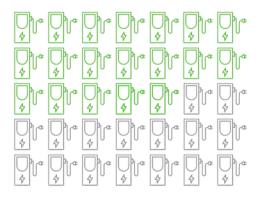
Assistance in site assessment, preliminary design, and applying to rebates for charging at multifamily housing and small and medium workplace properties.



Charging Installation Incentive Program

Incentive program for L1 and L2 EV charging infrastructure at multifamily properties

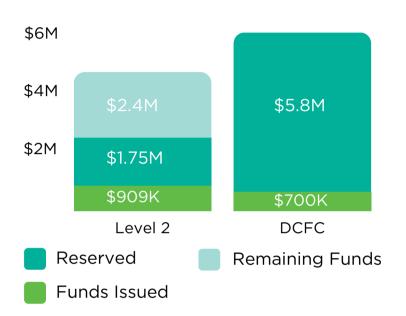
Funds Reserved: \$823K Approved Reservations: 19 Goal: 35 Sites, 150 ports



ONGOING METRICS

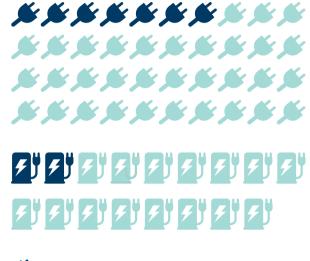
CALeVIP

Provide incentives for electric vehicle (EV) chargers as part of a regional program.



Funding: \$11.58M

Goal: 1K Level 2 + 85 DC Fast Chargers by 2023



📂 = 25 Level 2 Installations

= 5 DCFC Installations

FutureFit Fundamentals

Provide financial relief to contractors by expanding their knowledge of electrification technologies.



Funding: \$1.5M

Goal: 150 Participants Complete the Course (Phase 1)

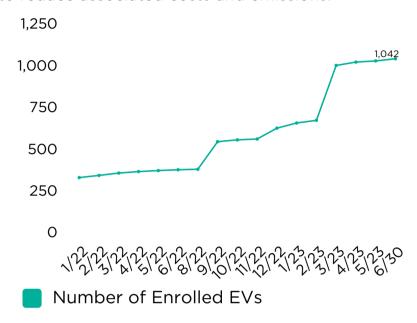


= 5 Participants Complete Course

ONGOING METRICS

GridShift EV Charging

Managed EV charging app that optimizes charging to reduce associated costs and emissions.



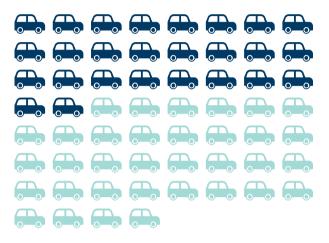
eHUB Report

Online customer resource center to enable engagement, education and action related to clean electricity, EVs and home electrification.



Charger Rebate Funds Reserved: \$120K

Charger Rebate goal: 120



Charger Rebates Reserved: 52

eHub visitor Goals:

Reach 275K Unique Visitors by EOY **Goal:**

Conduct 10 full-scale email campaigns





1. Outreach Events & Sponsorships

Date	Sponsorship	Location	
8/2/2023	Livable Sunnyvale General Meeting 6:30 p.m. Presentation	Toyota Sunnyvale 898 W El Camino Real Sunnyvale Sunnyvale, CA 94087	
8/21/2023	33rd Annual Los Altos Chamber of Commerce Charity Golf Classic 10:00 a.m 5:00 p.m. Sponsorship	Los Altos Golf & Country Club 1560 Country Club Dr. Los Altos, CA 94024	
8/24/2023	Silicon Valley Bike Coalition Summit 8:30 a.m. – 6:00 p.m. Sponsorship	Mountain View Community Center 201 S Rengstorff Ave Mountain View, CA 94040	
8/27/2023	Los Gatos Music in the Park 5:00 p.m. – 7:00 p.m. Sponsorship and tabling	Los Gatos Civic Center Lawn 110 E Main St Los Gatos, CA 95030	
August 2023	Sunnyvale Music & Dining Nights Branding sponsorship throughout series; tabling on 8/16/23	Downtown Sunnyvale Murphy Avenue	

2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.31%	06.250/
Commercial	96.73%	96.35%



3. Member Agency Working Group – June Update

The most recent MAWG meeting was held on June 29, 2023, and was attended by 9 different agencies and organizations with a total of 15 participants.

The following agenda items were presented and discussed:

- IRA Update: Direct Pay Guidance
- Mountain View's Engagement Grant Project Expanding Outreach
- 2022 Power Source Disclosure
- Medical Battery Program
- Priority Zone DC Fast Charger (PZDCFC)
- Clean Healthy Affordable Multifamily Properties (CHAMP)
- Cities Association Annual Meeting

^{*}MAWG took a recess during the month of July and will resume monthly meetings in August.

4. EmPower Silicon Valley Short Film Competition

- This year, awards were given to creative presentation categories, and middle schools were invited to participate
- Nine middle school and high school students won scholarship awards, for a total of \$19,000
- 16 films submissions featured concepts like home electrification and the impacts of climate change
- Winners featured in the newsletter and individually highlighted in a social media campaign



Stronger Together by Kelly Tung (Monta Vista High School, Grade 11) Winner of Best Narrative or Storytelling

5. Go Electric Summer Kick Off Sweepstakes Results



Sweepstakes Results



4,840 Participants



24,095 Actions Completed



114,152 Total Entries

Purpose of Sweepstakes: Encourage customers to learn about electrification and visit eHub tools.

Sweepstakes Rules: Participants can receive entries by completing specific actions and are entered into a drawing to win prizes.

Prizes: Ten winners had 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. All ten customers who won in the sweepstakes chose the \$500 electric bill credit.

6. Press Releases

- Silicon Valley Clean Energy 'A' Issuer Credit Rating Affirmed by S&P, press release, 06-07-23
- Central Coast Community Energy and Silicon Valley
 Clean Energy Celebrate 30 Megawatt Casa Diablo IV Geothermal Power Plant, press release, 07-09-23
- Scholarships Awarded to Students in EmPower
 Silicon Valley Short Film Competition, press release,
 07-10-23
- <u>Silicon Valley Clean Energy Launches the Small-to-Medium Business Rebates Program</u>, press release, 07-18-23
- Moody's Investor Service Upgrades Silicon Valley
 Clean Energy Investment-Grade Credit Rating to
 Baa1, press release, 07-27-23



7. Media – June

- How clean is our electricity?, Mountain View Voice, 06-18-23
- Impact Muni Bond: \$1 billion in green bonds to reduce the cost of clean energy in Southern California, Impact Alpha, 06-27-23
- EVgo Crosses \$10M Milestone in Utility Incentive Funding Awarded Since 2022, Market Screener, 06-29-23
- FUHSD Students Win 2023 California Green
 Ribbon Award, The Silicon Valley Voice, 06-30-23



FUHSD Students Win 2023 California Green Ribbon Award

Erika Towne & Press Release POSTED 03:00 AM, June 30, 2023



7. Media – July

- South Bay nonprofit offers clean energy business rebates,
 SiliconValley.com, 07-23-23
- South Bay nonprofit offers clean energy business rebates, The Mercury News, 07-23-23
- Short film competition explores 'Power of Community' in Cupertino, <u>The Mercury News</u>, <u>East Bay Times</u>, <u>San Francisco</u> <u>Daily Journal</u>, 07-23-23
- Short film competition explores 'Power of Community' in Saratoga, <u>The Mercury News</u>, <u>San Francisco Daily Journal</u>, 07-23-23
- Short film competition explores 'Power of Community' in Mountain View, *The Mercury News, East Bay Times, 07-23-23*

The Mercury News



LOCAL NEWS - News

Short film competition explores 'Power of Community' in Mountain View

Three student filmmakers win scholarships from Silicon Valley Clean Energy







Regulatory Update:

- 1. Load Management Standards
- 2. Distributed Energy Resources Data Access Proceeding

Legislative Update:

- 1. Budget Trailer Bill/AB 1373 (Garcia)
- 2. SVCE Legislative Positions



Regulatory Update



Key Regulatory Proceedings

Proceeding	Purpose	Status
Resource Adequacy (R.21-10-002)	 To ensure the safe and reliable operation of the grid in real-time providing sufficient resources to the California Independent System Operator (CAISO) when and where needed. To incentivize the siting and construction of new resources needed for future grid reliability. 	On June 29th, the CPUC adopted a new decision in the RA proceeding which includes several program refinements. Key amongst them is a prohibition on CCA service territory expansion for CCAs which had a greater than 1% RA deficiency in the prior 2-years. There are limited circumstances where a CCA may be allowed to file for expansion if the deficiency is cleared in the month ahead filing. The CPUC argues LSEs which do not meet their RA obligations are detrimental to grid reliability and cause cost shifting amongst customers. Similar to CCAs, Energy Service Providers (ESPs) are not allowed to sign new Direct Access customers if they have had an RA deficiency in the prior 2 years. As the current Provider of Last Resort, IOUs are exempt from the rule. Separately, the Decision sets the 2024 and 2025 PRM at 17% and extends the "effective PRM" through 2025 which encourages the IOUs to continue to procure 1,700-3,200 MW of contingency resources.
Distributed Energy Resource Program Data Access and other matters (R.22-11-013)	To achieve consistency, improve data access, and use for distributed energy resource (DER) customer programs.	A Ruling was issued in the DER Data Access proceeding to scope and establish a Data Working Group. The Data Working Group will develop solutions for customers and other entities to make informed decisions on selecting, adopting, evaluating, and utilizing DERs. SVCE plans to participate in the Data Working Group. SVCE Leg/Reg Update, August 2023



Legislative Update



Governor's Energy Reliability Budget Trailer Bill/AB 1373 (Garcia)

- SVCE is working closely with CalCCA on the Governor's Budget Trailer Bill on Energy Reliability.
- Our most significant remaining concern is unlimited ability for the CPUC to direct Investor Owned Utilities to centrally procure resources.
- While AB 1373 (Garcia) is now a two-year bill, there may be renewed discussions on a Budget Trailer Bill when the legislature returns from summer recess.

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)	Requires CPUC to establish a Neighborhood Decarb 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

Status of the bills that SVCE has taken positions on

Bill	Summary	Legislative Platform Policy	SVCE Position	Bill Status
AB 1393 (Garcia)	Legislative vehicle for Governor's Budget Trailer Bill on energy reliability	Competitive Equity	Oppose Unless Amended	Died – two-year bill

(1) 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

August 2023	September 2023	October 2023	November 2023	December 2023
Board of Directors, August 9:	Board of Directors, September 13:	Board of Directors, October 11:	Board of Directors, November 8:	Board of Directors, December 13:
	Consent:	Consent:	Consent:	Consent:
	Minutes	Minutes	Minutes	Minutes
	July 2023 Treasurer Report	August 2023 Treasurer Report	September 2023 Treasurer Report	October 2023 Treasurer Report
	Committee Reports	Committee Reports	Committee Reports	Committee Reports
	CEO Agreement Amendments	Adopt FY23-24 Workplan		
	Clean Air Day Resolution	Receive Q3 2023 Programs Update	Regular Calendar:	Regular Calendar:
			TBD	Rate Change Discussion
	Regular Calendar:	Regular Calendar:		2024 Legislative Policy Platform
	Budget approval	TBD		Board Elections Update
	Update on Strategic Plan and Adopt Strategic			·
	Focus Areas			
Executive Committee, August 25:	Executive Committee, September 22:	Executive Committee, October 27:	Executive Committee, TBD:	Executive Committee, TBD:
TBD	TBD	TBD	TBD	TBD
Program Snapshot	Program Snapshot	Program Snapshot	Program Snapshot	Program Snapshot
Finance & Admin Committee, Aug 1, 3pm:	Audit Committee, TBD:			
Budget Preview	Audit kick-off			



Staff Report - Item 3

Item 3: Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase

Agreement with Grace Orchard Solar II, LLC for Renewable Solar PV Supply (PCC1) and a 15-Year Energy Storage Service Agreement with Yellow Pine Solar III, LLC for Energy Storage, in Substantial Form and Any Necessary Ancillary

Agreements and Documents

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO and Director of Power Resources

Zakary Liske, Sr. Manager of Power Operations

Date: 8/9/2023

RECOMMENDATION

Staff recommends that the Board delegate authority to the Chief Executive Officer (CEO) to execute two separate NextEra agreements for the procurement of renewable solar energy and standalone storage capacity in substantial form and any necessary ancillary agreements and documents as follows:

1. Grace Orchard Solar II, LLC, Power Purchase Agreement (PPA) ("Grace Solar")

- a. 120 MW or approximately 331,000 MWh per year of Renewable Portfolio Standard (RPS)
 Portfolio Category Content One ("PCC1") eligible resources
- b. 15-Year term PPA with expected commercial operation date (COD) and term from July 1, 2027, through June 30, 2042.
- c. Total amount not-to-exceed \$286,000,000.

2. Yellow Pine Solar III, LLC, Energy Storage Service Agreement (ESSA) ("YP3 BESS")

- a. 115 to 120 MW, four-hour standalone battery energy storage system (BESS).
- b. 15-year deliver term with expected COD and term of August 1, 2025, through July 31, 2040.
- c. Dollar authority not to exceed \$420,000,000.

Grace Solar and YP3 BESS are needed to meet SVCE Board-directed clean energy targets; California's RPS and clean procurement mandates; and Resource Adequacy (RA) requirements.

BACKGROUND

In fall of 2022, Silicon Valley Clean Energy (SVCE) issued a Request for Offers (Joint RFO) for long-term clean resources. The goal of the RFO was to secure enough renewable energy and clean capacity to meet SVCE's Renewable Portfolio Standard (RPS) and carbon-free objectives as identified in SVCE's 2022 Integrated Resource Plan (IRP), while also complying with California's RPS and clean mandates under Senate Bill 100 ("SB 100") which set a goal of achieving a 60% RPS by 2030 and a 100% clean energy grid by 2045 with interim targets of 90% by 2035 and 95% by 204 as provided for under Senate Bill 1020. Resources with at least ten years in term were sought to help meet Senate Bill 350 ("SB 350") which sets a long-term procurement requirement of 65% of RPS per compliance period.

Clean resources were also sought to meet obligations as ordered in the California Public Utilities Commission (CPUC) issuing Decision (D.) 21-06-035, the Mid-term Reliability Procurement Order (MTR Order), requiring CPUC-jurisdictional LSEs, such as SVCE, to procure and/or develop a collective 11,500 MW of new capacity by

2026. In February 2023, the CPUC issued D.23-02-040, the Supplemental Mid-term Reliability Procurement Order (Supplemental MTR Order), requiring an additional 4,000 MW of new clean capacity to come online by 2027. SVCE's total share of the MTR Order and Supplemental MTR Order is 317 MW, which was determined based on SVCE's load ratio share of the CPUC's jurisdictional load in the Pacific Gas and Electric transmission access area. While SVCE has made significant progress towards meeting the Supplemental MTR order, an open position still exists.

The latest procurement effort is also consistent with SVCE's Board-direct clean energy goals of delivering 100% clean energy on an annual basis and to achieve a 75% RPS by 2030 as provided for in the Board-approved 2022 Integrated Resource Plan October 12, 2023 SVCE Board of Directors Meeting, Item 3. In support of SVCE's goals and mandates, SVCE has 17 long-term contracts for clean energy, capacity and/or reliability products totaling over \$2.2 billion over the life of the contracts. Currently, seven resources are online and estimated to meet approximately 32.7% of SVCE's retail sales in 2023 with the following RPS mix: Solar + Storage: 33%, Geothermal: 32%, Wind: 35%.

When all resources are on-line in 2025, SVCE will have achieved an 63.7% RPS from long-term resources and 42% of it's peak capacity will be met from clean resources. Table 1 is a summary of PPAs executed to date in an effort to meet RPS, resource adequacy and/or MTR requirements.

Table 1: Board Authorized Clean Energy Contracts Executed

1								ican Energy					
Seller Project Name Technology MW MW MWh Annual load in 2025 Annual load in 2028 (years) (MM\$) Approval State											Exceed		
1					Generation	Storage	Storage	Approximate % of	Approximate % of	Term	Authority	SVCE Board	
1 MN8		Seller	Project Name	Technology	MW	MW	MWh	Annual load in 2025	Annual load in 2028	(years)	(MM\$)	Approval	Status
2				Solar +									
3 Atlantica Coso Geothermal 43.8 9.60% 6.50% 15 \$331 Mar-20 Online	1	MN8	Slate	Storage	93	46.5	186	6.70%	6.60%	17	\$198	Oct-18	Online
Leeward Rabbitbrush Storage 40 8 20 3.00% 3.00% 15 \$64 Apr-20 Online	2	Ormat	Casa Diablo	Geothermal	7			1.40%	1.40%	10	\$43	Feb-20	Online
A Leeward Rabbitbrush Storage 40 8 20 3.00% 3.00% 15 \$64 Apr-20 Online	3	Atlantica	Coso	Geothermal	43.8			9.60%	6.50%	15	\$331	Mar-20	Online
Solar + Sola				Solar +									
5 NextEra Yellow Pine Storage 50 26 104 4.10% 4.00% 20 \$128 May-20 Online 6 Avantus Aratina Storage 80 20 60 6.60% 6.60% 20 \$174 Jun-20 construction 174 Power Global Atlas Solar 50 3.80% 3.80% 10 \$27 Jan-21 construction 7 Global Atlas Solar + Prescription 3.80% 3.80% 10 \$27 Jan-21 construction 9 AES Mountain View Wind 33.3 3% 30 20 \$128 Apr-21 construction 10 Origis San Luis West Storage 62.5 15.625 62.5 4% 4% 15 \$74 Apr-21 construction 11 Clearway Victory Pass Storage 100 25 100 8% 8% 15 \$149 May-21	4	Leeward	Rabbitbrush	Storage	40	8	20	3.00%	3.00%	15	\$64	Apr-20	Online
Solar + Sola				Solar +									
6 Avantus Aratina Storage 80 20 60 6.60% 6.60% 20 \$174 Jun-20 construct 174 Power 7 Global Atlas Solar 50 3.80% 3.80% 10 \$27 Jan-21 construct 174 Power 8 SB Energy Angela Storage 20 10 40 1.40% 1.40% 15 \$35 Mar-21 construct 175 Solar 4 Solar 50 Solar 4 Solar 50 So	5	NextEra	Yellow Pine	Storage	50	26	104	4.10%	4.00%	20	\$128	May-20	Online
174 Power				Solar +									Pre-
7 Global Atlas Solar 50 3.80% 3.80% 10 \$27 Jan-21 constru 8 SB Energy Angela Storage 20 10 40 1.40% 1.40% 15 \$35 Mar-21 constru 9 AES Mountain View Wind 33.3 3% 20 \$128 Apr-21 Onli 10 Origis San Luis West Storage 62.5 15.625 62.5 4% 4% 15 \$74 Apr-21 constru 11 Clearway Victory Pass Storage 100 25 100 8% 8% 15 \$149 May-21 Constru 12 Terra-Gen Cameron Crest Wind 77.7 5% 5% 15 \$150 May-21 Onli Rev Long Duration Long Duration 15.9375 127.5 n/a 15 \$100 Feb-22 constru	6	Avantus	Aratina	Storage	80	20	60	6.60%	6.60%	20	\$174	Jun-20	construction
Solar + Solar + Storage 20 10 40 1.40% 1.40% 1.5 5.35 Mar-21 construction 1.40% 1.40% 1.5 5.35 Mar-21 construction 1.40%		174 Power											Pre-
8 SB Energy Angela Storage 20 10 40 1.40% 1.40% 15 \$35 Mar-21 constru 9 AES Mountain View Wind 33.3 3% 3% 20 \$128 Apr-21 Onliv 10 Origis San Luis West Storage 62.5 15.625 62.5 4% 4% 15 \$74 Apr-21 constru 11 Clearway Victory Pass Storage 100 25 100 8% 8% 15 \$149 May-21 Constru 12 Terra-Gen Cameron Crest Wind 77.7 5% 5% 15 \$150 May-21 Onliv Rev Long Duration Long Duration 15.9375 127.5 n/a 15 \$100 Feb-22 construct	7	Global	Atlas	Solar	50			3.80%	3.80%	10	\$27	Jan-21	construction
9 AES Mountain View Wind 33.3 3% 3% 20 \$128 Apr-21 Online Solar + Pre 10 Origis San Luis West Storage 62.5 15.625 62.5 4% 4% 15 \$74 Apr-21 construction				Solar +									Pre-
Solar + Sola	8	SB Energy	Angela	Storage	20	10	40	1.40%				Mar-21	construction
10 Origis San Luis West Storage 62.5 15.625 62.5 4% 4% 15 \$74 Apr-21 construct	9	AES	Mountain View	Wind	33.3			3%	3%	20	\$128	Apr-21	Online
11 Clearway Victory Pass Storage 100 25 100 8% 8% 15 \$149 May-21 Construct				Solar +									Pre-
11 Clearway Victory Pass Storage 100 25 100 8% 8% 15 \$149 May-21 Constru 12 Terra-Gen Cameron Crest Wind 77.7 5% 5% 15 \$150 May-21 Onli Rev Long Duration Long Duration Pre Pre 15 \$100 Feb-22 construction	10	Origis	San Luis West	Storage	62.5	15.625	62.5	4%	4%	15	\$74	Apr-21	construction
12 Terra-Gen Cameron Crest Wind 77.7 5% 5% 15 \$150 May-21 Onlin Rev Long Duration Long Duration Pre 13 Renewables Tumbleweed Storage 15.9375 127.5 n/a 15 \$100 Feb-22 construction				Solar +									
Rev Long Duration 13 Renewables Tumbleweed Storage 15.9375 127.5 n/a 15 \$100 Feb-22 constru	11	Clearway	Victory Pass	Storage	100	25	100	8%			\$149	May-21	Construction
13 Renewables Tumbleweed Storage 15.9375 127.5 n/a 15 \$100 Feb-22 constru	12	Terra-Gen	Cameron Crest	Wind	77.7			5%	5%	15	\$150	May-21	Online
13 Renewables Tumbleweed Storage 15.9375 127.5 n/a 15 \$100 Feb-22 constru													
		Rev		Long Duration									Pre-
I ong Duration Pre	13	Renewables	Tumbleweed			15.9375	127.5	n/a		15	\$100	Feb-22	construction
				Long Duration									Pre-
	14	Onward		Storage		14.2	113.6	n/a		15	\$100	Mar-22	construction
													Pre-
	15	Ormat	Portfolio	Geothermal	16.75			3.30%	4.40%	20	\$256	Jun-22	construction
													In-
	16	OME	Fish Lake		1.82			0.40%	0.40%	20	\$30	Jun-22	development
													In-
17 MRP Hanford BESS 99.4 131.4 131.4 12 \$280 Apr-23 develop	17	MRP	Hanford	BESS	99.4	131.4	131.4			12	\$280	Apr-23	development

ANALYSIS & DISCUSSION

1. Grace Orchard Solar PV ("Grace Solar")

Grace Solar, is a 120 MW new build solar photovoltaic (PV) resource capable of producing 331,000 MWh of PCC1 RPS energy and renewable energy certificates (RECs) accounting for approximately 8-9% of SVCE's retail sales and counting towards annual and long-term RPS requirements. The resource is offered at a fixed-price in dollars per MWh under a fifteen-year term with an expected COD of July 1, 2027. The project is located in Riverside County, California within Southern California Edison's service territory and is within the California Independent System Operator (CAISO). Grace Solar is not capable of meeting resource adequacy or MTR obligations.

2. Yellow Pine Solar III BESS ("YP3 BESS")

YP3 BESS, is a 120 MW, four-hour, 480 MWh new build lithium-ion BESS. YP3 BESS is located adjacent to a solar PV facility which is contracted with a different off-taker. Only 115 MW of the project was awarded deliverability status by the CAISO which enables it to count for RA and MTR compliance. Currently, SVCE's share is 115 MW at 460 MWh duration, but it has the potential to upsize to 120 MW 480 MWh duration if the resource is awarded deliverability on an additional 5 MW of capacity. The developer will attempt to get the additional deliverability between now and the expected commercial operation date.

The BESS will enable SVCE to meet a portion of its RA requirements and MTR obligations. The amount of counting capacity is dependent on the CPUC's assessment of BESS ability to meet reliability requirements, which as of now represents approximately 85 MW of clean capacity. YP3 BESS will provide energy arbitrage value derived when the BESS is charged in lower priced-hours and discharged in higher-priced hours. SVCE will pay for the rights to the capacity at a fixed price over the fifteen-year term of the agreement which is expected to come on-line on August 1, 2025. YP3 is located in Clark County, Nevada and within the CAISO.

Both Grace Orchard Solar II, LLC and Yellow Pine Solar III, LLC are subsidiaries of NextEra Energy, Inc. ("NextEra") one of the largest developers and operators of clean energy in the United States. SVCE has an existing solar plus storage, Yellow Pine I, which achieved commercial operation in late July 2023.

Table 2: Summary of Proposed Resources

Counterparty	Grace Orchard Solar II, LLC	Yellow Pine Solar III, LLC
Parent Company	NextEra Energy, Inc.	NextEra Energy, Inc.
Product	New build solar PCC1 RPS Energy	New build BESS
Need and/or Compliance Obligation	SVCE's 100% Clean energy goal and RPS target SB100, SB350 and B1020	Resource Adequacy and MTR Procurement Order
Expected Delivery Term	15 years, July 1, 2027, through June 30, 2042.	15 years, August 1, 2025, through July 31, 2040
Contract Capacity	120 MW solar	115 MW BESS (with ability to add 5 MW)
Location	Riverside, CA	Clark County, NV
Percentage of Retail Load Served/RPS	~8-9%	N/A

RPS Compliance & Integrated Resource Plan

SB100 sets annual RPS targets starting in 2020 growing to 60% in 2030 and further sets a 100% clean energy goal by 2045. SVCE's board-approved IRP further sets an RPS target of 75% by 2030 and reaffirms, SVCE's 100% clean annual energy goal. Grace Solar provides an estimated 331,000 MWh of RPS eligible resources, bringing SVCE's expected RPS in 2028 to 71%. Figure 1 illustrates SVCE's progress towards meeting the Board-approved and state mandated annual RPS targets.

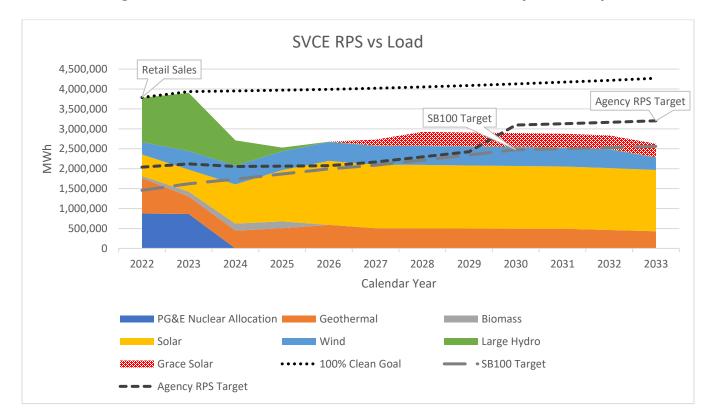


Figure 1: SVCE Annual Renewable Portfolio with Grace Solar (2022-2033)

SB350, passed in 2016, requires Load Serving Entities (LSE) such as SVCE to acquire a minimum of 65% of the state mandated RPS requirement through long-term PPAs (10 years or greater) starting with Compliance Period No. 4 "CP4" (2021-2024). The mandated overall RPS for CP4 is 40%, thus the long-term RPS procurement requirement is 26%. SVCE's existing PPAs will achieve a combined 29.2% RPS in CP4 from long-term resources. Grace Solar is expected to come on-line in 2027, helping meet long-term obligations in CP5. With the inclusion of the Grace Solar, SVCE's long-term RPS is 66.0% in CP5 and 66.3% in CP6, which is above California's mandated long-term RPS requirement of 33% and 37% respectively. This number represents SVCE position assuming all contracts are operational based on the on-line dates specified in the PPAs and that the resources perform consistent with the generation profiles provided in the PPAs as well. Table 3 shows SVCE's progress towards meeting the long-term RPS goals and mandates.

Table 3: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period

	_		•	•
		CP#4	CP#5	CP#6
		2021-2024	2025-2027	2028-2030
1.	State Mandated RPS per Compliance Period - % of	40%	50%	57%
	Retail Sales			
2.	State Mandated % of Mandated RPS (Row #1) to be	65%	65%	65%
	Contracted Under RPS Long-term Contracts			
3.	State Mandated % of Retail Sales with RPS Long-	26%	33%	37%
	term Contracts (Row 2* Row 1)			
4.	SVCE: Current Compliance with Row #3: Existing RPS	30.7%	64.8%	63.6%
	Achieved with Long-term Contracts			
5.	SVCE: RPS Achieved with Grace Solar	30.7%	66.0%	66.3%
	Open Position relative to State Mandate (Row #3)			
	+Above/ (-) Short	+4.7%	+33%	+29.3%

Mid-term Reliability Procurement Order & Resource Adequacy Capacity

SVCE has made significant progress towards meeting all tranches of procurement mandates per the MTR Order. SVCE is deficient in meeting its generic 2025, 2026 and 2027 requirements which orders the procurement of 1,100 MW of new clean energy capacity including standalone storage. YP3, will contribute approximately 85 MW of qualifying capacity, thus helping close SVCE's obligation through 2027.

SVCE has an obligation to procure sufficient capacity to meet grid reliability as prescribed by the CPUC's RA Program. Resources such as YP3 effectively contribute clean capacity towards SVCE's RA requirements. The actual amount of counting capacity will vary depending on CPUC's rules as determined by the effectiveness of the resources ability to meet peak demands. Further, additional changes to the RA Program are being considered through two active workstreams in the RA proceeding at the CPUC (Rulemaking 21-10-002): the Implementation Track Phase 3 and the Phase 2 Reform Track. If the proposals currently being deliberated are adopted and implemented, the RA Program framework will become much more complex and complicate an LSE's ability to meet RA Program requirements in general.

Standalone storage is necessary to meet reliability in the future as California transitions to a clean grid. Under RA Program reform rules, SVCE will need to demonstrate YP3's ability to meet peak demand in certain hours, most likely the evening hours, and show sufficient energy to charge the batteries during non-peak hours. While Grace Solar provides sufficient energy to demonstrate an ability to charge YP3, at current state the CAISO has not awarded Grace Solar deliverability status and therefore may not help meet future RA obligations. SVCE will need to rely on other energy sources with demonstrable RA capacity to fulfill its obligations.

Clean Energy and Capacity

Since its inception SVCE has had a 100% clean energy goal measured annually. This has been achieved through a mix of RPS-eligible resources including wind, solar and geothermal combined with non-RPS eligible, but carbon-free resources such as large hydroelectricity and nuclear allocations from Pacific Gas and Electric. While SVCE's clean goal is ambitious, the Board has directed staff to evaluate a pathway to achieving a portfolio whereby load and resources are better matched in all hours of the day. To achieve this objective, staff must balance the need to also achieve reliability and affordability objectives.

Strategically, resources which can deliver clean energy in all hours of the day, such as geothermal, will best help SVCE balance its objectives however such resources are scarce. Solar plus storage, whether paired at the same site, or virtually collocated help achieve a more sustainable grid by pushing out solar generation in

later hours of the day, when demand peaks. These types of resources are necessary to meet current retail product needs including GreenStart, GreenPrime and GreenPrime Direct in addition to help us build a pathway to 24/7 clean energy.

In an effort to strategically retain large commercial load eligible for Direct Access (DA), in 2019 the Board approved Resolution No. 2019-12 (Attachment 3), authorizing the CEO to negotiate non-standard pricing agreements. SVCE may allocate a portion of clean energy and capacity benefits and cost obligations associated with Grace Solar and YP3 BESS directly to a customer to fulfill obligations under the non-standard pricing agreement, provided that the direct allocation is consistent with the Board approved non-standard pricing policy.

SVCE does not have a clean capacity goal. Currently, short-term natural gas RA-only capacity contracts account for the vast majority of SVCE's RA portfolio. In 2022, 80% of SVCE's requirements were from RA-only contracts. SVCE has 278 MW of storage either paired with solar or standalone with the ability to shift 1,201 MWh. In total, SVCE will have 1,283 MW of clean nameplate capacity in 2028. YP3 will increase SVCE's clean capacity from 42% to 56% in 2028 when the resource is on-line. Table 4 is an illustration of SVCE's energy and capacity portfolio in 2028.

Table 4: Energy and RA Capacity Portfolio with Grace Solar and YP3 BESS - Estimated for 2028

Estimated for 2028	Annual Energy (GWh)	Energy Source as a Percent of Total Retail Sales	Capacity Source as a Percent of Total RA Requirement
Biomass	0	0%	0%
Geothermal	503	12.4%	7%
Solar with Grace Solar	1,938	47.8%	1%
Wind	473	11.7%	2%
Large Hydroelectric	1,130	27.9%	0%
Battery Storage with YP3	0	0%	42%
Natural Gas RA-only	0	0%	32%
Hanford - Natural Gas	Est. 8	.2%	16%
Total	4,052	100%	100%

STRATEGIC PLAN

Execution of the Grace Solar PPA and YP3 ESSA supports the goals of the Board adopted Fiscal Year 2022-23 Strategic Plan including:

- Goal 1: Plan for resources to meet SVCE's mission while balancing multiple stakeholder objectives.
- Goal 2: Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner.
- **Goal 3:** Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives.

Strategic Focus Area: 24x7 CLEAN ENERGY: Explore 24x7 clean energy delivery at scale, to improve on the current 100% clean energy goal

ALTERNATIVE

While Grace Solar is necessary to meet overall RPS goals, the Board may decide not to approve this RPS resource and instead procure short-term resources or issue a new RFO. Staff does not recommend this

alternative, as renewable resources are scarce and the cost of short-term RECs far exceeds the implied REC cost associated with Grace Solar.

The Board may also elect not to approve YP3 BESS and instead delay procurement of clean capacity needed to meet RA and MTR or decide not to abide by the MTR Order. Doing so may expose SVCE's ratepayers to significant cost in the form of "back-stop" procurement undertaken by a central procurement entity in addition to CPUC penalties imposed on SVCE.

FISCAL IMPACT

Ultimate execution of the agreements will result in cost to SVCE starting in Fiscal Year (FY) 2025 for YP3 BESS and FY 27 for Grace Solar, which will be included in the budget at that time. Staff's spending authority over the life of the projects will be limited to the amount recommended including \$286,000,000 for Grace Solar and \$420,000,000 for YP3.

With the inclusion of the two proposed contracts, SVCE's expected lifetime cost is \$2.8 billion as shown in Table 1 above.

ATTACHMENTS

- 1. Grace Orchard Solar Power Purchase Agreement redacted version
- 2. Yellow Pine Solar III Power Purchase Agreement redacted version
- 3. Resolution 2019-12 Delegating Authority to the Chief Executive Officer to Negotiate Non-Standard Pricing Agreements for Eligible Large Commercial and Industrial Customers

RENEWABLE POWER PURCHASE AGREEMENT COVER SHEET

Seller: Grace Orchard Solar II, LLC, a Delaware limited liability company

Buyer: Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCE")

<u>Description of Facility</u>: A 120 MW_{AC} solar photovoltaic facility located in Riverside County, California, as further described in <u>Exhibit A</u>.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	12/31/2023
Executed Interconnection Agreement	6/1/2023
CEC Pre-Certification Obtained	6/30/2026
Federal and State Discretionary Permits	9/30/2025
Network Upgrades Completed	11/1/2026
Guaranteed Construction Start Date	4/30/2026
Initial Synchronization	3/1/2027
Guaranteed Commercial Operation Date	7/1/2027

<u>Delivery Term</u>: The period for Product delivery will be for fifteen (15) Contract Years.

Expected Energy: The amount of Expected Energy is set forth below.

Contract Year	Expected Energy (MWh)
1	
2	
3	
4	
5	
6	
7	
8	

9	
10	
11	
12	
13	
14	
15	

Guaranteed Capacity: MW_{AC}

Contract Price:

Contract Year	Contract Price
1 – 15	

Product:

▼ Facility Energy

☑ Green Attributes (Portfolio Content Category 1)

Scheduling Coordinator: Seller/Seller Third Party

Development Security:

Performance Security:

Page

TABLE OF CONTENTS

ARTI	ICLE 1 DEFINITIONS	1
1.1	Contract Definitions	
1.2	Rules of Interpretation	
1.2	Truces of The production	
	ICLE 2 TERM; CONDITIONS PRECEDENT	
2.1	Contract Term.	23
2.2	Conditions Precedent	
2.3	Development; Construction; Progress Reports	
2.4	Remedial Action Plan	24
ARTI	ICLE 3 PURCHASE AND SALE	25
3.1	Purchase and Sale of Product	25
3.2	Sale of Green Attributes	25
3.3	Imbalance Energy	25
3.4	Ownership of Renewable Energy Incentives	
3.5	Future Environmental Attributes	
3.6	Test Energy.	
3.7	Reserved.	
3.8	Reserved	26
3.9	CEC Certification and Verification.	26
3.10	Reserved	
3.11	RPS Standard Terms and Conditions.	
3.12	Compliance Expenditure Cap.	
3.13	Project Configuration	
л D Т І	ICLE 4 OBLIGATIONS AND DELIVERIES	20
4.1	Delivery	
4.2	Title and Risk of Loss.	
4.3	Forecasting	
4.4	Dispatch Down/Curtailment	
4.5	Reduction in Delivery Obligation	
4.6	Guaranteed Energy Production	
4.0 4.7	WREGIS	
4.7	Submission to CRS	
4.9	Interconnection Costs	33
	ICLE 5 TAXES	
5.1	Allocation of Taxes and Charges	
5.2	Cooperation	35

ARTI	CLE 6 MAINTENANCE OF THE FACILITY	35
6.1	Maintenance of the Facility.	35
6.2	Maintenance of Health and Safety.	35
6.3	Shared Facilities	36
	CLE 7 METERING	
7.1	Metering.	
7.2	Meter Verification	37
ΔΡΤΙ	CLE 8 INVOICING AND PAYMENT; CREDIT	37
8.1	Invoicing.	
8.2	Payment.	
8.3	Books and Records	
8.4	Payment Adjustments; Billing Errors.	
8.5	Billing Disputes.	
8.6	Netting of Payments	
8.7	Seller's Development Security.	
8.8	Seller's Performance Security.	
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral	
8.10	Financial Statements.	
	CLE 9 NOTICES	
9.1	Addresses for the Delivery of Notices	
9.2	Acceptable Means of Delivering Notice	41
лрті	CLE 10 FORCE MAJEURE	41
10.1	Definition	
10.1	No Liability If a Force Majeure Event Occurs	
10.2	Notice	
10.3	Termination Following Force Majeure Event	
10.4	Totalination Following Porce Majoure Event	43
ARTI	CLE 11 DEFAULTS; REMEDIES; TERMINATION	44
11.1	Events of Default	
11.2	Remedies; Declaration of Early Termination Date	
11.3	Termination Payment	
11.4	Notice of Payment of Damage Payment or Termination Payment	48
11.5	Disputes With Respect to Damage Payment or Termination Payment	
11.6	Rights And Remedies Are Cumulative	48
11.7	Seller's Pre-COD Liability Limitation	

ARTI	CLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF	
	WARRANTIES	
12.1	No Consequential Damages.	
12.2	Waiver and Exclusion of Other Damages.	49
ARTI	CLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY	50
13.1	Seller's Representations and Warranties	50
13.2	Buyer's Representations and Warranties	501
13.3	General Covenants.	52
13.4	Prevailing Wage	
13.5	Minority-Owned Businesses	53
ARTI	CLE 14 ASSIGNMENT	
14.1	General Prohibition on Assignments	
14.2	Collateral Assignment; Financing Cooperation	53
14.3	Permitted Assignment by Seller.	53
14.4	Buyer Limited Assignment	54
ARTI	CLE 15 DISPUTE RESOLUTION	55
15.1	Governing Law.	
15.2	Venue.	
15.3	Dispute Resolution	
ARTI	CLE 16 INDEMNIFICATION	55
16.1	Mutual Indemnity	55
16.2	Notice of Claim	56
16.3	Failure to Provide Notice.	56
16.4	Defense of Claims	56
16.5	Subrogation of Rights	57
16.6	Rights and Remedies are Cumulative	57
ARTI	CLE 17 INSURANCE	57
17.1	Insurance	57
ARTI	CLE 18 CONFIDENTIAL INFORMATION	
18.1	Definition of Confidential Information	
18.2	Duty to Maintain Confidentiality	
18.3	Irreparable Injury; Remedies.	
18.4	Disclosure to Lenders, Etc.	
18.5	Public Announcements	60

ARTIC	CLE 19 MISCELLANEOUS	60
19.1	Entire Agreement; Integration; Exhibits	60
19.2	Amendments	60
19.3	No Waiver	60
19.4	No Agency, Partnership, Joint Venture or Lease	60
19.5	Severability	60
19.6	Mobile-Sierra.	61
19.7	Counterparts; Electronic Signatures	61
19.8	Electronic Delivery.	61
19.9	Binding Effect.	
19.10	No Recourse to Members of Buyer.	61
19.11	Forward Contract; Inapplicability/Waiver of Bankruptcy Code	
	Section 366.	61
19.12	Further Assurances	
19.13	Change in Electric Market Design	62

Exhibits :	
Exhibit A	Facility Description
Exhibit B	Major Project Development Milestones and Commercial Operation
Exhibit C	Compensation
Exhibit D-1	Scheduling Coordinator Responsibilities
Exhibit D-2	Buyer and Seller Operating Coordination
Exhibit E	Progress Reporting Form
Exhibit F-1	Form of Average Expected Energy Report
Exhibit F-2	Form of Monthly Available Generating Capacity Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Reserved
Exhibit N	Notices
Exhibit O	Form of Collateral Assignment Agreement
Exhibit P	Form of Estoppel Certificate
Exhibit Q	Form of Buyer Limited Assignment Agreement
Exhibit R	Metering Diagram

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("<u>Agreement</u>") is entered into as of ______, 2023 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own or otherwise control, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

1.1 <u>Contract Definitions</u>. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"AC" means alternating current.

"Acceptable Issuer" means a U.S. commercial bank, or a foreign bank with a U.S. branch, with such bank having at least and having a Credit Rating of

"Accepted Compliance Costs" has the meaning set forth in Section 3.12.

"AD/CVD" means antidumping and/or countervailing duty.

"Adjusted Energy Production" has the meaning set forth in Exhibit G.

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transfer" and "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by", and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation,

storage, or transmission assets (such as a "yield co") controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NextEra Energy Partners, LP ("NEP"), NextEra Energy Operating Partners, LP ("NEOP"), and NextEra Energy Capital Holdings, Inc. ("NECH"), and their respective direct or indirect subsidiaries.

"After-Tax Basis" means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the "Base Payment"), supplemented by a further payment (the "Additional Payment") to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

"<u>Agreement</u>" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"Approved Forecast Vendor" means (i) Seller or a Seller Affiliate, or if not Seller or a Seller Affiliate, (ii) a vendor selected by Seller for the purposes of providing or verifying the forecasts under Section 4.3(d) reasonably acceptable to Buyer, with such acceptance not to be unreasonably withheld, conditioned or delayed.

"Assigned Product" has the meaning set forth in Section 14.4.

"Attestation" has the meaning set forth in Section 4.8.

"<u>Available Generating Capacity</u>" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

"Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"<u>Business Day</u>" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

"<u>Buyer</u>" means Silicon Valley Clean Energy Authority, a California joint powers authority.

"Buyer Bid Curtailment" means the occurrence of both of the following:

- (a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy than the full amount of Energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time; and
- (b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Facility, as the result of a Buyer instruction or lack of instruction to the SC:
- (i) not having submitted a Self-Schedule or Energy Supply Bid for the MW subject to the reduction;
- (ii) having submitted an Energy Supply Bid and the MW subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid; or
- (iii) having submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"Buyer Curtailment Order" means an instruction from Buyer to Seller to reduce Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Buyer Bid Curtailment, Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility, Curtailment Order and/or Market Curtailment Order.

"Buyer Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Energy from the Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer Default hereunder which directly causes Seller to be unable to deliver Facility Energy to the Delivery Point; provided, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"<u>Buyer Default</u>" means a failure by Buyer (or its agents) to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.

"<u>Buyer Limited Assignment Agreement</u>" has the meaning set forth in Section 14.4 and substantially in the form attached as <u>Exhibit Q</u>.

"Buyer's WREGIS Account" has the meaning set forth in Section 4.7(a).

- "<u>CAISO</u>" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- "CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.
- "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.
- "<u>CAISO Operating Order</u>" means the Operating Instruction or Dispatch Instruction, as each are defined in the CAISO Tariff.
- "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 Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
 - "Capacity Damages" has the meaning set forth in Exhibit B.
- "<u>CEC</u>" means the California Energy Commission, or any successor agency performing similar statutory functions.
- "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.
- "CEC Precertification" means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.
 - "CEQA" means the California Environmental Quality Act.
- "Change in Law" means the occurrence, after the Effective Date, of any of the following: (a) the adoption or implementation of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) any change to a Resource Adequacy Ruling; (d) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CEC or the CPUC or its Energy Division, (e) any change

in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC, or (f) any change in STC REC-1, STC REC-2 or STC 6.

- "Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided* that in calculating ownership percentages for all purposes of the foregoing:
- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
- (b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) shall be excluded from the total outstanding equity interests in Seller;

provided further, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

"Claim" has the meaning set forth in Section 16.2.

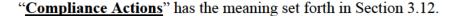
"COD Certificate" has the meaning set forth in Exhibit B.

"Collateral Assignment Agreement" has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit O.

"Commercial Operation" has the meaning set forth in Exhibit B.

"Commercial Operation Date" has the meaning set forth in Exhibit B.

"Commercial Operation Delay Damages" means an amount equal



"Compliance Costs" has the meaning set forth in Section 3.12.

"Compliance Expenditure Cap" has the meaning set forth in Section 3.12.

"Confidential Information" has the meaning set forth in Section 18.1.

"Construction Start" has the meaning set forth in Exhibit B.

"Construction Start Date" has the meaning set forth in Exhibit B.

"Contract Price" has the meaning set forth on the Cover Sheet.

"Contract Term" has the meaning set forth in Section 2.1(a).

"Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

"Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

"CPUC" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements (for clarification purposes NextEra Energy Inc.'s guaranty of NEECH shall not be considered a third-party enhancement)) 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, Fitch or Moody's. If ratings by Fitch, S&P and Moody's are not equivalent, the two (2) highest ratings shall apply.

"CRS" has the meaning set forth in Section 4.8.

"Curtailment Order" means any of the following:

- (a) CAISO orders, directs, alerts, or provides notice to a Party or the SC, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;
- (b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected:
 - (c) a curtailment ordered by CAISO or the Participating Transmission Owner; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; provided, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Daily Delay Damages" means an amount equal to

"Damage Payment" means

"<u>Day-Ahead Forecast</u>" has the meaning set forth in Section 4.3(c).

"<u>Day-Ahead Schedule</u>" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Market Curtailment Period or a Buyer Curtailment Period, which amount shall, for any time period, be equal to

"<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).

"Deficient Month" has the meaning set forth in Section 4.7(e).

"<u>Delivery Point</u>" has the meaning set forth in <u>Exhibit A</u>.

"<u>Delivery Term</u>" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"Development Cure Period" has the meaning set forth in Exhibit B.

- "<u>Development Security</u>" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.
 - "<u>Disclosing Party</u>" has the meaning set forth in Section 18.1.
 - "DOC" means the U.S. Department of Commerce.
 - "Early Termination Date" has the meaning set forth in Section 11.2(a).
 - "Effective Date" has the meaning set forth on the Preamble.
- "<u>Electrical Losses</u>" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.
 - "Eligible Intermittent Resource Protocol" has the meaning set forth in the CAISO Tariff.
- "Eligible Renewable Energy Resource" has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.
 - "Energy" means electrical energy generated by the Facility.
 - "Energy Supply Bid" has the meaning set forth in the CAISO Tariff.
- "<u>Estoppel Certificate</u>" has the meaning set forth in Section 14.2 and substantially in the form attached as <u>Exhibit P</u>.
 - "Event of Default" has the meaning set forth in Section 11.1.
 - "Excess MWh" has the meaning set forth in Exhibit C.
- "Executed Interconnection Agreement Milestone" means the date for completion of execution of the Interconnection Agreement by Seller (or Seller's Affiliate) and the PTO as set forth on the Cover Sheet.
- "Expected Energy" means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year or other time period in the quantity specified on the Cover Sheet.
- "<u>Facility</u>" the solar photovoltaic generating facility described on the Cover Sheet and in <u>Exhibit A</u>, located at the Site and including mechanical equipment and associated facilities and equipment (but excluding any Shared Facilities) required to deliver Energy to the Delivery Point.
- "<u>Facility Energy</u>" means Energy delivered to the Delivery Point, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in

accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"<u>Facility Meter</u>" means the CAISO Approved Meter that will measure all Facility Energy.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"<u>Fitch</u>" means Fitch Ratings Ltd., or its successor.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"<u>Forced Facility Outage</u>" means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"Forecasting Penalty" means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure and Buyer's scheduling activities in such hour with respect to Facility Energy, the product of (a) the absolute difference (if any) between (i) the expected Energy for such hour set forth in the Day-Ahead Forecast, or if there is no Day-Ahead Forecast, then the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Facility, multiplied by (b) the absolute value of the Real-Time Price in such hour.

"Forward Certificate Transfers" has the meaning set forth in Section 4.7(a).

"Future Environmental Attributes" shall mean, except to the extent set forth in the last sentence of this definition, any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include Tax Benefits including without limitation production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

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

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Benefits including without limitation production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

"Green Tag Reporting Rights" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"Guaranteed Capacity" means the amount of generating capacity of the Facility, as measured in MW_{AC} at the Delivery Point (i.e., measured at the Facility Meter as such meter readings at the Facility Meter are adjusted by the CAISO for any applicable Electrical Losses and Station Use to the extent such Electrical Losses and Station Use are not already reflected in the Facility Meter measurements), set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5 of Exhibit B.

"<u>Guaranteed Commercial Operation Date</u>" has the meaning set forth on the Cover Sheet, subject to extension pursuant to <u>Exhibit B</u>.

"<u>Guaranteed Construction Start Date</u>" has the meaning set forth on the Cover Sheet, subject to extension pursuant to <u>Exhibit B</u>.

"Guaranteed Energy Production" means an amount of Adjusted Energy Production equal to

"Guarantor" means, with respect to Seller, (a)

an Affiliate of Seller with an Investment Grade Credit Rating, or (c) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of

(iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) executes and delivers a Guaranty for the benefit of Buyer.

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

"Imbalance Energy" means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

"Indemnifiable Loss(es)" has the meaning set forth in Section 16.1(a).

"Indemnified Group" has the meaning set forth in Section 16.1(a).

"Indemnified Party" has the meaning set forth in Section 16.1(a).

"Indemnifying Party" has the meaning set forth in Section 16.1(a).

"<u>Initial Synchronization</u>" means the initial delivery of Facility Energy to the Delivery Point.

"Installed Capacity" means the actual generating capacity of the Facility, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, as demonstrated by a performance test, adjusted for ambient conditions on the date of the performance test, and evidenced by a certificate substantially in the form attached as Exhibit I hereto; provided, the Installed Capacity may not exceed the Guaranteed Capacity.

"Interconnection Agreement" means the interconnection agreement(s) entered into by Seller or Seller's Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"<u>Interconnection Facilities</u>" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"Interest Rate" has the meaning set forth in Section 8.2.

"Inter-SC Trade" or "IST" has the meaning set forth in the CAISO Tariff.

"Investment Grade Credit Rating" means a Credit Rating of

If ratings by S&P, Fitch, and Moody's are not equivalent, the highest two ratings shall apply. For avoidance of doubt, a Credit Rating from more than one credit agency is not necessary for a Party to demonstrate an Investment Grade Credit Rating.

"ITC" means the investment tax credit established pursuant to Section 48, 48E or other applicable provisions of the United States Internal Revenue Code of 1986, as in effect from time-to-time throughout the Delivery Term or any successor provision.

"Joint Powers Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" means that certain Joint Powers Agreement dated March 31, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"<u>Law</u>" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"Lender" means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"<u>Letter(s) of Credit</u>" means one or more irrevocable, standby letters of credit, issued by an Acceptable Issuer, in a form substantially similar to the letter of credit set forth in <u>Exhibit K</u>.

"<u>Licensed Professional Engineer</u>" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

"Limited Assignee" has the meaning set forth in Section 14.4.

"Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

"Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this

Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Green Attributes and Renewable Energy Incentives.

"Lost Output" has the meaning set forth in Section 4.6.

"Major Project Development Milestone" has the meaning set forth in in Exhibit B.

"Market Curtailment Order" means the instruction from Buyer to Seller to reduce Energy from the Facility by the amount, and for the period of time set forth in such instruction, in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

"Market Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price; *provided*, that the duration of any Market Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Master File" has the meaning set forth in the CAISO Tariff.

"Meter Service Agreement" has the meaning set forth in the CAISO Tariff.

"<u>Milestones</u>" means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

"Minority-Owned Business" means a business enterprise (a) that is (i) at least 51% owned by one or more women, any groups or individuals found to be socially or economically disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)) or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625, one or more disabled veterans of the United States military, or one or more lesbian, gay, bisexual or transgender individuals or (ii) if a publicly owned business, at least 51% of the common stock of which is owned by one or more of such individuals; and (b) whose management and daily business operations are controlled by one or more of such individuals.

"Monthly Delivery Forecast" has the meaning set forth in Section 4.3(b).

"Moody's" means Moody's Investors Service, Inc., or its successor.

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

"<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"NEECH" has the meaning set forth in the definition of Affiliate.

"NEER" means NextEra Energy Resources, LLC.

"<u>Negative LMP</u>" means, in any Settlement Period or Settlement Interval, the Day-Ahead Market or Real-Time Market at the Facility's PNode is less than Zero dollars (\$0).

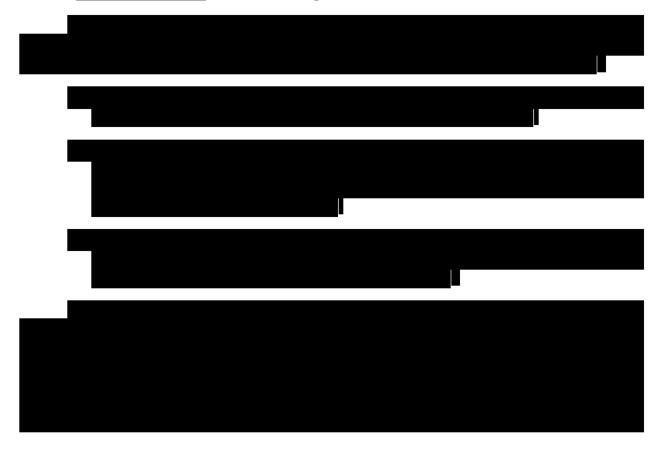
"Negative LMP Strike Price" means zero dollars per MWh (\$0/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Exhibit C.

"NEOP" has the meaning set forth in the definition of Affiliate.

"NEP" has the meaning set forth in the definition of Affiliate.

"<u>NERC</u>" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

"Network Upgrades" has the meaning set forth in the CAISO Tariff.





"Non-Defaulting Party" has the meaning set forth in Section 11.2.

"Notice" shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (e-mail).

"Notice of Claim" has the meaning set forth in Section 16.2.

"Participating Generator Agreement" has the meaning set forth in the CAISO Tariff.

"Participating Transmission Owner" or "PTO" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"Party" or "Parties" has the meaning set forth in the Preamble.

"<u>Performance Measurement Period</u>" means each two (2) consecutive Contract Year periods during the Delivery Term, calculated on a non-rolling basis such that no Contract Year is included in more than one Performance Measurement Period. The first Performance Measurement Period shall include Contract Years 1 and 2. The second Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

"<u>Performance Security</u>" means (a) cash or (b) a Letter of Credit or (c) a Guaranty in the amount set forth on the Cover Sheet.

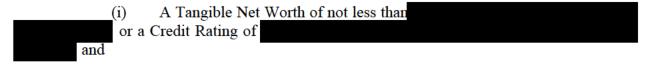
"Permitted Transfer" means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided* (i)(A) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (B) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility, and (ii) if Seller is not the surviving entity, the transferee (A) executes and delivers to Buyer a written agreement under which the transferee assumes in

writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (B) meets the Seller Security requirements;



"<u>Permitted Transferee</u>" means (a) any Affiliate of Seller, or (b) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:



(ii) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.



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

"Planned Outage" means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.5(a).

"PNode" has the meaning set forth in the CAISO Tariff.

"Portfolio Content Category" means PCC1, PCC2 or PCC3, as applicable.

"Portfolio Content Category 1" or "PCC1" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"Prevailing Wage Requirement" has the meaning set forth in Section 13.4.

"Product" has the meaning set forth on the Cover Sheet.

"Progress Report" means a progress report including the items set forth in Exhibit E.

"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 utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities 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 industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"PTC" means the production tax credit established pursuant to Section 45 or 45Y of the United States Internal Revenue Code of 1986, as in effect from time-to-time throughout the Delivery Term or any successor provision.

"PTC Amount" means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of Facility Energy at the time, grossed up on an After-Tax Basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment, Buyer Curtailment Order, Market Curtailment Order, or any other action or omission by Buyer (or its agents) including a Buyer Default which causes Seller to be unable to deliver Facility Energy to the Delivery Point, with the applicable MWh figure to be calculated by reference to the amount of Deemed Delivered Energy.

"PV Equipment" means solar photovoltaic cells, modules, onboard sensors, control components, inverters, or any of their components.

"Qualified Operator" means Seller or an operator of photovoltaic solar generation facilities that has sufficient experience and technical capability to perform for Seller's benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated three (3) or more photovoltaic solar generation facilities, each having a nameplate capacity rating of twenty (20) MW or more, for not less than three (3) years.

"<u>Real-Time Forecast</u>" means any Notice of any change to the Available Generating Capacity or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

"Real-Time Market" has the meaning set forth in the CAISO Tariff.

"Real-Time Price" means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

"Receiving Party" has the meaning set forth in Section 18.1.

"Remedial Action Plan" has the meaning set forth in Section 2.4.

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"Renewable Energy Incentives" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Facility or any part thereof (including the Tax Benefits and other credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, or Future Environmental Attribute.

"<u>S&P</u>" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

"Schedule" has the meaning set forth in the CAISO Tariff, and "Scheduled" has a corollary meaning.

"<u>Scheduled Energy</u>" means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff),

or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"Security Interest" has the meaning set forth in Section 8.9.

"Self-Schedule" has the meaning set forth in the CAISO Tariff.

"Seller" has the meaning set forth on the Cover Sheet.

"Seller's WREGIS Account" has the meaning set forth in Section 4.7(a).

"Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, that the Parties agree that the value of Green Attributes and Renewable Energy Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

"Settlement Interval" has the meaning set forth in the CAISO Tariff.

"Settlement Period" has the meaning set forth in the CAISO Tariff.

"Shared Facilities" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with Affiliates and/or third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

"Site" means the real property on which the Facility is or will be located, as further described in Exhibit A and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer's approval of such updates, which approval shall not be unreasonably withheld, conditioned or delayed.

"Site Control" means that Seller, for the Contract Term starting on the Evidence of Site Control Date set forth on the Cover Sheet (or, prior to the Delivery Term, its Affiliate as of the Evidence of Site Control Date set forth on the Cover Sheet): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"<u>SP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"Station Use" means:

- (a) The Energy generated by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and
- (b) The Energy generated by the Facility that is consumed within the Facility's electric energy distribution system as losses.
- "System Emergency" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.
- "<u>Tangible Net Worth</u>" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.
- "<u>Tax</u>" or "<u>Taxes</u>" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.
- "<u>Tax Benefits</u>" means the PTC, ITC, and any other state, local and/or federal tax benefit or incentive, including energy credits determined under Sections 38, 45, 45Y, 46, 48 and 48E of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production, sale, or storage of renewable energy and/or the operation, construction, investments in or ownership of, the Facility (including any cash payment or grant).

"Terminated Transaction" has the meaning set forth in Section 11.2(a).

"Termination Payment" has the meaning set forth in Section 11.3.

"<u>Test Energy</u>" means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"<u>Test Energy Rate</u>" has the meaning set forth in Section 3.6.

- "Trade FME Claims" has the meaning set forth in Section 10.6.
- "<u>Transmission Provider</u>" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.
- "<u>Transmission System</u>" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.



- "<u>Ultimate Parent</u>" means NextEra Energy, Inc., NEER, NEP, NEOP, or NEECH, and includes any combination thereof.
 - "Variable Energy Resource" or "VER" has the meaning set forth in the CAISO Tariff.
- "<u>WREGIS</u>" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.
 - "WREGIS Certificate Deficit" has the meaning set forth in Section 4.7(e).
- "<u>WREGIS Certificates</u>" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.
- "WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.
- 1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such terms shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars;
- (k) the expression "and/or" when used as a conjunction shall connote "any or all of";
- (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
- (m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 <u>Contract Term.</u>

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("<u>Contract Term</u>"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for three (3) years following the termination of this Agreement.
- 2.2 <u>Conditions Precedent</u>. The Delivery Term shall not commence until Seller completes each of the following conditions and delivers to Buyer an attestation from an authorized representative of Seller that such conditions have been satisfied, which Buyer shall review and either confirm or provide notice to Seller of any deficiencies with three (3) Business Days of Seller's provision of required information; *provided*, Buyer shall be deemed to confirm such attestation of Seller if Buyer does not provide notice to Seller of any deficiencies within such three (3) Business Day period:
- (a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit H</u> and (ii) a certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit I</u> setting forth the Installed Capacity on the Commercial Operation Date;
- (b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;
- (c) An Interconnection Agreement between Seller or Seller's Affiliate and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;
- (d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are required to be satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;
- (e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

- (f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;
- (g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and
- (h) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.
- 2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and shall hold regularly scheduled (i.e., quarterly or monthly, as applicable) meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress, such meeting to be held in person or by teleconference as agreed between the Parties. The form of the Progress Report is set forth in Exhibit E, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
- 2.4 Remedial Action Plan. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones, or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a), (b) or (c), a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's reasonably detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones; provided, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

- 3.1 <u>Purchase and Sale of Product</u>. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of the Product produced by or associated with the Facility at the Contract Price and in accordance with <u>Exhibit C</u>, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues.
- 3.2 <u>Sale of Green Attributes</u>. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.
- 3.3 <u>Imbalance Energy</u>. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments related to such Imbalance Energy shall be for the account of Buyer.
- 3.4 <u>Ownership of Renewable Energy Incentives</u>. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 Future Environmental Attributes.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, if, after the Effective Date the Facility is able to provide Future Environmental Attributes for any reason, including due to a change in market conditions or Law, Buyer shall have the exclusive right to such Future Environmental Attributes and there shall be no increase in the Contract Price; provided, however, that such right shall be subject to the final sentence of this Section 3.5(a) and Section 3.5(b) and Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has

agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

- (b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), Seller agrees to work with Buyer in good faith to provide reasonably requested documentation and execute reasonable documentation necessary to effectuate the transfer and registration of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); provided, that the Parties acknowledge and agree such terms shall not alter the other material terms of this Agreement.
- 3.6 <u>Test Energy</u>. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for As compensation for such Test Energy and associated Product, the compensation due to Seller shall be in the amount of:

 For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.
 - 3.7 **Reserved**.
 - 3.8 Reserved.
- 3.9 <u>CEC Certification and Verification</u>. Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall, subject to Section 3.12, obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.
 - 3.10 <u>Reserved</u>.

3.11 RPS Standard Terms and Conditions.

(a) <u>Tracking of RECs in WREGIS</u>. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable

Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

- (b) <u>Transfer of Renewable Energy Credits</u>. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].
- (c) <u>Eligibility</u>. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].
- (d) With respect to the immediately preceding paragraphs (a) (c), (i) the reference in Section 3.11(a) to "first delivery under the contract" has the same meaning as "first delivery of Facility Energy under this Agreement", (ii) the references in Section 3.11(c) to "Project" have the same meaning as "Facility", (iii) the reference in Section 3.11(c)(ii) to "the Project's output" has the same meaning as "the Facility Energy net of losses if required by Law", and (iv) each reference in the last sentences of Section 3.11(b) and Section 3.11(c) to "commercially reasonable efforts" means efforts consistent with and subject to Section 3.12 below.
- 3.12 <u>Compliance Expenditure Cap</u>. If a Change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.1, 3.2, 3.5, 3.9, or 3.11, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("<u>Compliance Costs</u>") that Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at

("Compliance Expenditure Cap").

- (a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."
- (b) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall

provide Notice to Buyer of such anticipated Compliance Costs. Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "<u>Accepted Compliance Costs</u>"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

- (c) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.
- (d) If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days, or if Buyer does not timely pay the costs and expenses in excess of the Accepted Compliance Costs, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability or obligation under this Agreement for any failure to take, such Compliance Actions.
- (e) If a Change in Law prevents Seller from complying with its obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.1, 3.2, 3.5, 3.6, 3.9, or 3.11, and it is not possible to overcome the Change in Law through Compliance Actions or the expenditure of money, then, except as otherwise provided or contemplated in this Agreement with respect to how a Change in Law will be addressed, including without limitation under Section 3.11, Seller shall provide Notice to Buyer of such Change in Law and the consequences for Seller's performance hereunder, and the Parties shall enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered consistent with such Change in Law, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, *provided* that if no such agreement is achieved resolution shall be determined in accordance with Article 15.
- 3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) as set forth in a written agreement executed by the Parties.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

- (a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.
- (b) <u>Green Attributes</u>. All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.
- (c) <u>Scheduling Coordination</u>. The Parties agree to coordinate with respect to the dispatch of Energy from the Facility on a periodic basis. The Parties further agree to update Sections 4.3 to 4.4 or Exhibit D as needed by mutual written agreement.

4.2 Title and Risk of Loss.

- (a) <u>Energy</u>. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- (b) <u>Green Attributes</u>. Title to and risk of loss related to the Green Attributes associated with the Facility Energy shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.
- 4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.
- (a) <u>Annual Forecast of Energy</u>. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Energy,

by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

- (b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter at least ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy and Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2, or as reasonably agreed to by the Parties ("Monthly Delivery Forecast").
- Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Energy for each Settlement Interval of each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each Settlement Interval of each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.
- Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast in (i) Available Generating Capacity of or more and (ii) hourly expected Energy of or more, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity changes by at least or hourly expected Energy changes by as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer; provided that Buyer specifies the method no later than twenty (20) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

- (e) <u>Forced Facility Outages.</u> Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.
- (f) <u>Forecasting Penalties</u>. Unless excused by a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.
- (g) <u>CAISO Tariff Requirements</u>. To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder. Seller shall also provide access to CAISO real time expected Energy forecasts for each Settlement Interval of each hour if available.

4.4 **Dispatch Down/Curtailment**.

- (a) <u>General</u>. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, Market Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.
- (b) <u>Buyer Curtailment and Market Curtailment.</u> Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, Buyer Bid Curtailments, and/or Market Curtailment Orders; *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with any Buyer Curtailment Period and/or Market Curtailment Period as set forth in Section (b) of <u>Exhibit C</u>.
- Curtailment Order, Market Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Curtailment Order, Buyer Curtailment Order, Market Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Curtailment Order, Buyer Curtailment Order, Market Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

- Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment, Market Curtailment Order, or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment, Market Curtailment Order, or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with thencurrent methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment, Market Curtailment Order, or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.
- 4.5 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:
- Facility Maintenance. In developing the Operating Coordination in Exhibit D-2, the Parties will work together on a mutually acceptable template to document how maintenance and outages will impact the availability of the Facility to be bid and scheduled in the CAISO market. Subject to providing Buyer sixty (60) days' prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided, that (i) no notice is required for scheduled maintenance or any changes or extensions thereto which and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days' prior Notice to Buyer so long as (X) Seller makes its request more than three (3) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is acceptable to Buyer in its reasonable discretion not to be unreasonably withheld, conditioned or delayed. To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Between Seller shall not schedule non-emergency maintenance that reduces the energy generation of the Facility by more than unless (i) such outage is required to avoid an emergency or damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of , (iii) such outage is required in accordance with Prudent Operating Practices, (iv) such outage is in connection with Force Majeure events, (v) such outage is required by Law, the requirements of CAISO or the interconnecting utility, and/or other applicable Governmental Authority, or (vi) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) - (a)(vi), a "Planned Outage").

- (b) <u>Forced Facility Outage</u>. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.
- (c) <u>System Emergencies and other Interconnection Events</u>. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Market Curtailment Period, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.
- (d) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
- less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Facility Energy delivered during the relevant Performance Measurement Period, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy during such Performance Measurement Period, (2) Energy in the amount it could reasonably have delivered to Buyer during such Performance Measurement Period but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, and Curtailment Periods ("Lost Output"). Lost Output shall be measured in the same manner as Deemed Delivered Energy. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G, which, except as set forth in Section 11.1(b)(v), (vi) and (vii), shall be Buyer's sole and exclusive remedy in connection with Seller's failure to meet the achieve the Guaranteed Energy Production amount.
- 4.7 <u>WREGIS</u>. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including 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. In addition:
- (a) Seller shall ensure all applicable steps have been taken to register the Generating Facility with WREGIS that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, and, within ninety (90) days of Commercial Operation, Seller shall ensure the Generating Facility is registered with active status in WREGIS and is associated with an active account in WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee

that Buyer identifies by Notice to Seller ("<u>Buyer's WREGIS Account</u>"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

- (b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- (c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.
- (d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.
- A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("Deficient Month") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate after the Deficient Month or (y) provides Replacement Green Deficit within Attributes (as defined in Exhibit G) delivered to CAISO as Scheduled Energy within after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.7, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
- (f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.
- 4.8 <u>Submission to CRS</u>. Upon request of Buyer as necessary throughout the Delivery Term, Seller shall submit an Approved Tracking Attestation Form ("<u>Attestation</u>") for the Facility

to be qualified as "CRS Listed" by the Center for Resource Solutions ("<u>CRS</u>") at https://www.tfaforms.com/4652008 or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request.

4.9 <u>Interconnection Costs</u>. As between Buyer and Seller, Seller is responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility.

ARTICLE 5 TAXES

- Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.
- 5.2 <u>Cooperation</u>. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

- 6.1 <u>Maintenance of the Facility</u>. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.
- Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary,

disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity for Buyer's sole use, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID, and (iv) provide that in the event of any curtailment that is not specific to the Facility's CAISO Resource ID of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

ARTICLE 7 METERING

7.1 **Metering**.

Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a single CAISO Resource ID. Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's cost, throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved Plan, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility.

- (b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that the CAISO requires the configuration of the Facility to include as the sole meter for the Facility, the Facility Meter, and (ii) the CAISO requires the Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.
- 7.2 <u>Meter Verification</u>. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified at least seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

- 8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month and any other payment amounts under this Agreement, including the amount of Energy produced by the Facility as read by the Facility Meter, the calculation of Facility Energy, Deemed Delivered Energy, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Buyer to verify the accuracy of all invoices.
- 8.2 <u>Payment</u>. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in <u>Exhibit N</u>, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) days after

receipt of the invoice or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another with respect to this Agreement is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

- 8.3 <u>Books and Records</u>. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).
- 8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.
- 8.5 <u>Billing Disputes</u>. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the

extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other with respect to this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- 8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Acceptable Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security.
- Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Acceptable Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option (a) exchange one permitted form of Development Security or Performance Security for another permitted form of Development

Security or Performance Security, as applicable, as well as (b) change the issuer of Letter of Credit for any such Development Security or Performance Security.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 **Financial Statements**.

- (a) From the Effective Date, Buyer shall provide to Seller unaudited monthly financial statements within ninety (90) days of end of each month and audited financial statements within one hundred twenty (120) days after the end of each fiscal year; *provided*, *however*, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with generally accepted accounting principles in the United States, consistently applied.
- (b) In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor or Guarantor's

ultimate parent (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, and if applicable, as posted on the website of the Guarantor's ultimate parent or the Securities Exchange Commission.

ARTICLE 9 NOTICES

- 9.1 <u>Addresses for the Delivery of Notices</u>. Except as provided in <u>Exhibit D-1</u>, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on <u>Exhibit N</u> or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.
- 9.2 Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled next Business Day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm prevailing Pacific Time, on the next Business Day, provided that notice by electronic communication will not be deemed effective until confirmed by return electronic communication from the recipient; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

- (a) "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic ((including COVID-19) and any quarantine related to any such epidemic or pandemic); any

temporary restraint or restriction imposed by applicable Law or any directive from a governmental authority; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below; or a one-time failure of the Facility's final step-up transformer so long as it is maintained by Seller in accordance with Prudent Operating Practice.

- Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event or as relates to the one-time failure of the Facility's final step-up transformer as set forth above in Section 10.1(b); or (vii) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation of the Facility following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.
- No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall 10.2 be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed, provided the suspension of performance due to a claim of Force Majeure Event shall include any reasonable time period for mobilization/re-mobilization. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) subject to Section 4 of Exhibit B, and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable after becoming aware of the event and that the event will have an impact on the Facility, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly unable to perform its obligations hereunder and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party;

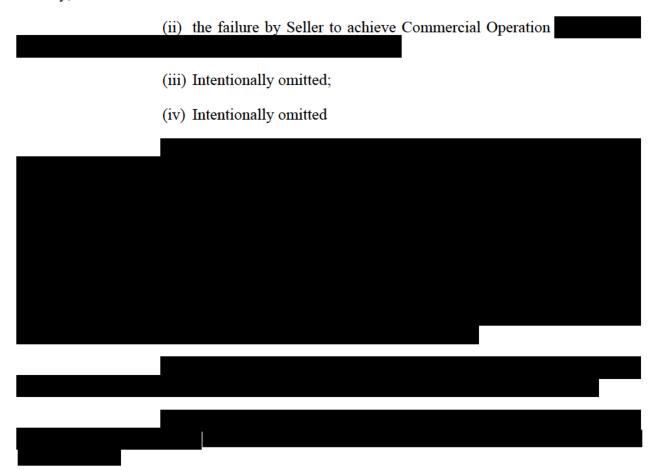


ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An "Event of Default" shall mean,

- (a) with respect to a Party (the "<u>Defaulting Party</u>") that is subject to the Event of Default the occurrence of any of the following:
- (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;
- (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);
- (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(v), (vi) or (vii), the exclusive remedies for which are set forth in Section 4.6), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);
 - (iv) such Party becomes Bankrupt;

- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party, other than in compliance with other provisions of this Agreement.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:
- (i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility;



(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount to the extent and in accordance with this Agreement in the event Buyer draws against the Performance Security for any reason other than to satisfy a Damage Payment or a Termination Payment;

(ix) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Acceptable Issuer, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

- (A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
 - (B) the failure of the Guarantor to make any payment required;
 - (C) the Guarantor becomes Bankrupt;
- (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
- (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
- (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

(x) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Acceptable Issuer, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

- (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
 - (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.
- 11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:
- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii) subject to the limitations in Section 11.7), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto, and *further provided*, promptly upon Buyer's receipt of the Damage Payment or Termination Payment, as applicable Buyer shall return to Seller the Development Security or the Performance Security to the extent either of them, as applicable, did not comprise (i.e., was not used as) the Damage Payment or the Termination Payment, as applicable.

11.3 <u>Termination Payment</u>. The Termination Payment ("<u>Termination Payment</u>") for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a

single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

- 11.4 <u>Notice of Payment of Damage Payment or Termination Payment</u>. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Damage Payment or Termination Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- 11.5 <u>Disputes With Respect to Damage Payment or Termination Payment</u>. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, as applicable, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, shall be determined in accordance with Article 15.
- 11.6 <u>Rights And Remedies Are Cumulative</u>. Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

- 12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.
- 12.2 <u>Waiver and Exclusion of Other Damages</u>. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE LOSS OR RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.6, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR

LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and within thirty (30) days after the Effective Date shall be qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
 - (e) The Facility is located in the State of California.

- (f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.
- by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer's only remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of such delays. Notwithstanding the foregoing, this Section 13.1(g) shall not restrict Seller's ability to seek relief under Article 10 to the extent a Force Majeure Event occurs after the Effective Date (including, for the avoidance of doubt, any impact from the COVID-19 pandemic that otherwise satisfies the requirements for a Force Majeure Event under this Agreement).
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date, Buyer represents and warrants as follows:
- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
- (b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

- (d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under this Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided*, *however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).
- (f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- (g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
- 13.3 <u>General Covenants</u>. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
- (b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.
- laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. In addition, Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any ("Prevailing Wage Requirement"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement, work site, project labor agreement, collective bargaining agreement, or other similar agreement by Seller's primary EPC contractor related to construction of the Facility.

Operation Date, Seller shall provide Buyer a written report describing (a) the Facility's actual economic impact through the date of such report, including capital expenditures and number of construction jobs created, (b) the Facility's anticipated prospective capital expenditures and construction and operations jobs to be created, and (c) all Minority-Owned Businesses that supplied goods or services to Seller in connection with the Facility through the date of such report, including certifications or other documentation of such Minority-Owned Businesses' status as such, and the aggregate amount paid to Minority-Owned Businesses in connection with the Facility.

ARTICLE 14 ASSIGNMENT

- 14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld conditioned or delayed. Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third-party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller. Buyer shall cooperate with Seller or any Lender or other financing party to execute or arrange for the delivery of any consents, estoppels, and other documents reasonably requested by Seller, Lender, or such other financing party, including the Collateral Assignment Agreement and Estoppel Certificate as provided in Section 14.2, to consummate any financing or refinancing, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement.
- 14.2 <u>Collateral Assignment; Financing Cooperation</u>. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon, execute, and deliver to Seller and Lender (i) a consent to collateral assignment of this Agreement in a form substantially similar to the consent to collateral assignment set forth in <u>Exhibit O</u> ("<u>Collateral Assignment Agreement</u>") and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in <u>Exhibit P</u> ("<u>Estoppel Certificate</u>").
- 14.3 <u>Permitted Assignment by Seller</u>. Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided*, Buyer's consent shall not be required if: (a) such Change of Control is, or is a

result of, a direct or indirect Change of Control of NEOP or NEP; or (b) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing (including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

14.4 **Buyer Limited Assignment.** Subject to the terms and conditions of this Agreement, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity ("Limited Assignee") that has an Investment Grade Credit Rating of Buyer's right to receive certain Product (which shall not be for retail sale) and Buyer's obligation to make payments for such Product to the Seller ("Assigned Product"). The limited assignment shall not introduce, or purport to convey or otherwise allege, any right of Buyer or Limited Assignee to make any prepayment to Seller under the Agreement or to file or impose any lien on the Facility, or otherwise modify any provision of this Agreement, and shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement with respect to the Assigned Product. Buyer shall pay Seller for any payments not timely made by Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment, including without limitation any credit-related requirements, and payment for all amounts due and owing under this Agreement, including the total gross amount due to Seller under each invoice. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Default if not cured within the applicable cure period specified in this Agreement. Subject to the foregoing, Buyer may make such an assignment upon not less than thirty (30) days' advance written notice by delivering to Seller a written request for Seller's consent to such assignment and the proposed form of limited assignment agreement in form and substance substantially in the form attached to this Agreement as Exhibit Q ("Buyer Limited Assignment Agreement") subject to Buyer's, Limited Assignee's and Seller's ability to make the representations and warranties contained therein, and provided that Seller shall not be required to agree to any terms or conditions which are reasonably expected to have an adverse effect on Seller or its Lenders. Notwithstanding anything to the contrary in connection with such limited assignment, if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to such limited assignment, or (2) Seller's performance of any obligation under the assignment agreement, including without limitation if Seller makes any change to the recipient of the WREGIS Certificates, fails to meet any requirements of this Agreement, then Seller shall not be deemed to be in breach of any obligation in the this Agreement, including without limitation any representation or warranty herein. Buyer shall reimburse Seller for its costs and expenses, including reasonable attorneys' fees, incurred in connection with any such assignment, or requested assignment, including in connection with obtaining required consents from its Lenders. Limited Assignee and Buyer shall comply with all reasonable requests received by Seller or any Lender in connection with such limited assignment, including providing any requested acknowledgments with respect to any Collateral Assignment Agreement.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 <u>Governing Law</u>. 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 laws. 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.
- 15.2 <u>Venue</u>. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Santa Clara County, California.
- Dispute Resolution. In the event of any dispute arising under this Agreement, 15.3 within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. Unless agreed to in writing by each Party, the mediation shall be concluded within the earlier of (a) sixty (60) days after the mediator is selected, and (b) ninety (90) days of the date the dispute is submitted to mediation. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 **Mutual Indemnity**.

- (a) Each Party (the "<u>Indemnifying Party</u>") agrees to defend, indemnify and hold harmless the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an "<u>Indemnified Party</u>" and collectively, the "<u>Indemnified Group</u>") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, "<u>Indemnifiable Losses</u>").
 - (b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any

liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

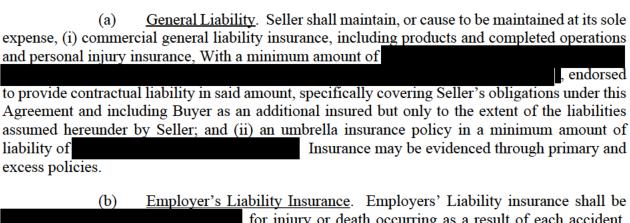
- 16.2 <u>Notice of Claim</u>. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("<u>Claim</u>"). The Notice is referred to as a "<u>Notice of Claim</u>". A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.
- 16.3 <u>Failure to Provide Notice</u>. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, *provided further*, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.
- **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid

or incurred by Indemnified Party up to the date of such Notice.

- Mill, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.
- 16.6 <u>Rights and Remedies are Cumulative</u>. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 **Insurance**.



- for injury or death occurring as a result of each accident.

 With regard to bodily injury by disease, the apply to each employee.
- (c) <u>Workers Compensation Insurance</u>. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.
- (d) <u>Business Auto Insurance</u>. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.
- (e) <u>Construction All-Risk Insurance</u>. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating

equipment as arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

- (f) <u>Pollution Legal Liability</u>. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of naming the Seller (and Lender if any) as additional named insured. Insurance may be evidenced through primary and excess policies.
- (g) <u>Subcontractor Insurance</u>. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
- (h) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.
- (i) <u>Waiver of Subrogation</u>. Each party agrees that with respect to any losses covered by, or required to be covered by, property insurance under the terms of this agreement, other than those losses caused by the other party's gross negligence or intentional acts, each party hereby waives and releases the other, its officers, directors, employees, and agents, from any and all claims and liability or responsibility with respect to such losses, including losses arising out of the inability to conduct business. Each party further agrees that its insurance companies shall have no right of subrogation against the other on account of this release.

ARTICLE 18 CONFIDENTIAL INFORMATION

Information," whether oral or written which is delivered or conveyed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party"): (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the

recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

- 18.2 **Duty to Maintain Confidentiality**. Upon receiving or learning of Confidential Information, the Receiving Party will: (a) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as set forth in this Article 18; (b) restrict access to such Confidential Information to only those of its Affiliates and its and their customers, employees, officers, directors, advisors (including legal and accounting advisors), agents, contractors, subcontractors, actual and potential lenders, equity investors (including tax equity), and other financing parties (including Lenders), and actual and potential acquirors and assignees, in each case who reasonably need to know it and are bound by confidentiality provisions no less stringent than those in this Article 18; and (c) use such Confidential Information for purposes of administering this Agreement and, in cases where Seller is the Receiving Party, for the purpose of developing, financing, owning, and operating the Facility. Confidential Information will retain its character as Confidential Information but may be disclosed by the Receiving Party if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.) and that any request made thereunder may be subject to an exception from disclosure.
- 18.3 <u>Irreparable Injury; Remedies</u>. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available except as otherwise limited under this Agreement, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.
- 18.4 <u>Disclosure to Lenders, Etc.</u>. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their Affiliates, and Seller's actual or potential agents, consultants,

contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions no less stringent than those in this Article 18.

18.5 <u>Public Announcements</u>. Except as may otherwise be required by applicable Law, neither Party will, nor will it allow its affiliates, contractors and vendors to, make any public announcement, press release or statement regarding this Agreement unless the public announcement, press release or statement is approved in advance by the other Party, in its sole discretion.

ARTICLE 19 MISCELLANEOUS

- 19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof
- 19.2 <u>Amendments</u>. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.
- 19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 19.4 <u>No Agency, Partnership, Joint Venture or Lease</u>. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement, and to the extent set forth herein, any Lender and/or Indemnified Party).
- 19.5 <u>Severability</u>. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally

acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

- 19.6 <u>Mobile-Sierra</u>. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.
- 19.7 <u>Counterparts; Electronic Signatures</u>. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.
- 19.8 <u>Electronic Delivery</u>. Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.
- 19.9 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 No Recourse to Members of Buyer. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 Forward Contract; Inapplicability/Waiver of Bankruptcy Code Section 366.

(a) Each Party acknowledges, intends, and to the extent applicable agrees that (i) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and at least one of the Parties is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (ii) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Performance Security to any amounts due and owing to such Party, constitute "settlement payments" within the meaning of the United States Bankruptcy Code; and (iii) its rights under Section 11.2 of this Agreement constitute a "contractual right to liquidate, terminate or accelerate" or offset under a forward contract within the meaning of \$8556, 561 of the Bankruptcy Code.

- (b) Each Party acknowledges and agrees that, upon a Party becoming Bankrupt, the other Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 546(e), 548(d)(2), 556, and 561 thereof.
- (c) Each Party acknowledge and agrees that, for all purposes of this Agreement, that the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor are inapplicable, or if found to be applicable each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor. In any such bankruptcy case or proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or any other provision of 11 U.S.C. § 101-1532.
- 19.12 <u>Further Assurances</u>. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- 19.13 Change in Electric Market Design. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Signatures on following page]

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

GRACE ORCHARD SOLAR II, LLC, a Delaware limited liability company	SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority
By: Name: Title:	By: Name: Title:

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Grace Orchard II Solar (for clarification, the Facility will comprise only a portion of the Grace energy complex)

Site includes all or some of the following APNs: Seller to provide at least sixty (60) days prior to the Guaranteed Construction Start Date

County: Riverside

CEQA Lead Agency: Riverside County

Type of Generating Facility: Photovoltaic

Guaranteed Capacity: 120 MW

Dedicated Interconnection Capacity for Facility: 120 MW

Delivery Point: Facility PNode

Facility Meter: TBD

Facility Interconnection Point: Colorado River Substation

Participating Transmission Owner: Southern California Edison Company

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

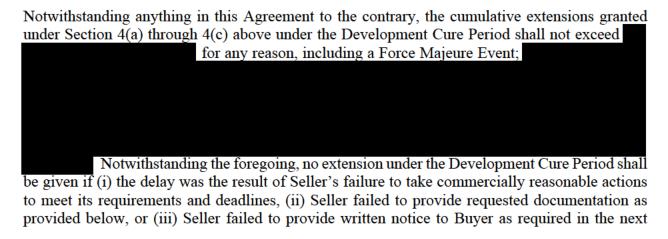
- (a) "<u>Construction Start</u>" will occur upon Seller's execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as <u>Exhibit J</u> hereto, and the date certified therein by Seller shall be the "<u>Construction Start Date</u>." The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- (b) If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable to Buyer for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility,

 On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Guaranteed Construction Start Date, but shall not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1.
- 2. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of <u>Exhibit H</u> (the "<u>COD Certificate</u>"), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions precedent in Section 2.2 for achieving Commercial Operation. The "<u>Commercial Operation Date</u>" shall be the later of
- (a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- (b) If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
- (c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date,

 On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial

Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

- 3. <u>Termination for Failure to Achieve Commercial Operation</u>. If the Facility has not achieved Commercial Operation Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
- 4. <u>Extension of the Guaranteed Dates</u>. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date both shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "<u>Development Cure Period</u>") for the duration of any and all delays arising out of the following circumstances:
 - (a) a Force Majeure Event occurs; or
- (b) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by at least four (4) months prior to the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or
- (c) Seller has not acquired by the Guaranteed Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility, including for avoidance of doubt any Interconnection Facilities or Shared Facilities and to permit Seller and the Facility to make available and sell Product; or
- (d) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.



sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

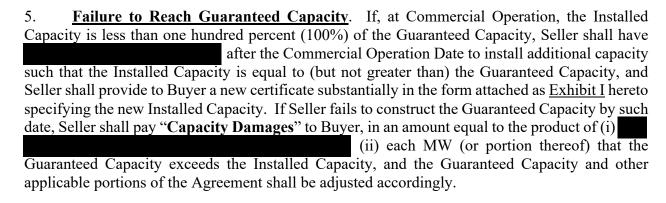
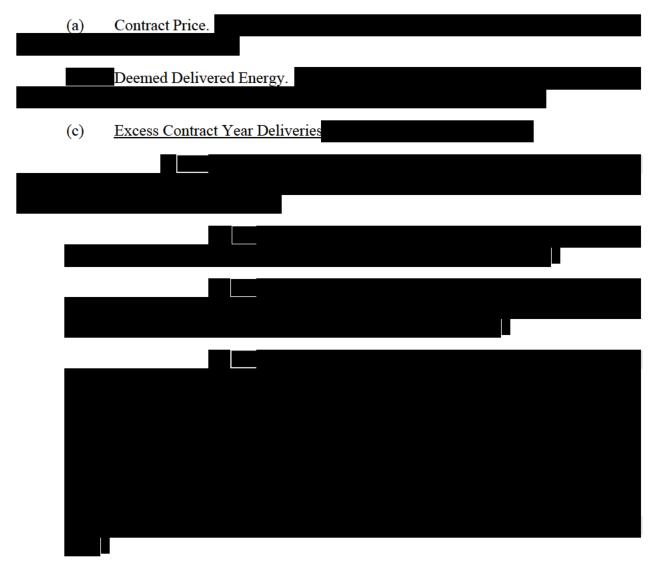


EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.



(d) <u>Excess Settlement Interval Deliveries</u>. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("<u>Excess MWh</u>"), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh.

((e)	Curtailment	Payments.		

- (f) <u>Negative LMP Strike Price</u>. Buyer may change the Negative LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; *provided*, *however*, that the Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh (\$0/MWh).
- (g) <u>Test Energy</u>. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6 of the Agreement.
- (h) <u>Tax Benefits</u>. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Benefits, or if any Tax Benefits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Benefits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Benefits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Benefits during the Contract Term.

EXHIBIT D-1

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

- (a) <u>Seller as Scheduling Coordinator for the Facility</u>. Upon Initial Synchronization of the Facility to the CAISO Grid and through the end of the Delivery Term, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of Test Energy and the Product at the Delivery Point. As determined by Buyer, Seller (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteenminute market or real time basis.
- (b) <u>Notices</u>. Seller (as the Facility's SC) shall use a web-based system through which Seller shall submit to CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide Buyer access to such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.
- (c) CAISO Costs and Revenues. Buyer shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Seller as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility. Subject to the foregoing, Seller shall pass through to Buyer all CAISO costs and revenues associated with the Facility, which shall be reflected as a credit or debit on the monthly invoices provided to Buyer in accordance with the invoicing and payment provisions of Article 8, including the netting provisions of Section 8.6.
- (d) <u>CAISO Settlements</u>. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

- (e) <u>Dispute Costs</u>. Seller (as the Facility's SC) may be required to dispute CAISO settlements in respect of the Facility. If Buyer has directed Seller to dispute a CAISO settlement, Buyer agrees to pay Seller's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Buyer with respect to the Facility.
- (f) <u>Master File and Resource Data Template</u>. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.
- (g) <u>NERC Reliability Standards</u>. Seller (as Scheduling Coordinator) shall comply with all NERC reliability standards.

EXHIBIT D-2

BUYER AND SELLER OPERATING COORDINATION

The Parties shall work together after the Effective Date to develop this Exhibit D-2. No later than ninety (90) days prior to the Commercial Operation Date, representatives of Buyer and Seller shall finalize this Exhibit D-2. This Exhibit D-2 may be reviewed annually (date and time to be mutually agreed) to optimize operations for both Parties. The Parties shall cooperate to integrate the systems and controls necessary to implement this Exhibit D-2.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

- 1. Executive Summary.
- 2. Facility description.
- 3. Site plan of the Facility.
- 4. Gantt chart schedule showing progress on achieving each of the Milestones.
- 5. Description of any material planned changes to the Facility and the Site.
- 6. Summary of activities during the previous calendar quarter or month, as applicable.
- 7. Forecast of activities scheduled for the current calendar quarter.
- 8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 9. List of issues that are likely to potentially affect Seller's Milestones.
- 10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
- 11. If applicable, prevailing wage reports as required by Law.
- 12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1
FORM OF AVERAGE EXPECTED ENERGY REPORT

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:0 0	11:0 0	12:0 0	13:0 0	14:0 0	15:0 0	16:0 0	17:0 0	18:0 0	19:0 0	20:0	21:0 0	22:0	23:0	24:0
JAN																								
FEB																								
MAR																								
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MAY																								
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JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2

FORM OF MONTHLY AVAILABLE GENERATING CAPACITY REPORT

Available Generating Capacity, MW Per Hour – [Insert applicable month]

1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.6 of the Agreement, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

 \underline{A} = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh



 $\underline{\mathbf{D}}$ = the Contract Price for the Performance Measurement Period, in \$\text{MWh}

"<u>Adjusted Energy Production</u>" shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output.

"<u>Lost Output</u>" has the meaning given in Section 4.6 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

"Replacement Green Attributes" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided* the amount of damages owing shall be adjusted to account for Replacement Green Attributes, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by[licensed professional engineer] ("Engineer") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.
As of [DATE], Engineer hereby certifies and represents to Buyer the following:
1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than the Guaranteed Capacity.
3. The Facility's testing included a performance test demonstrating peak electrical output of no less than the Guaranteed Capacity for the Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
4. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on [DATE].
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on [DATE].
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [DATE].
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this, 20
[LICENSED PROFESSIONAL ENGINEER]
By:
Its:
Date:

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity is delivered by [licensed professional
engineer] ("Engineer") to Silicon Valley Clean Energy Authority, a California joint powers
authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase
Agreement dated ("Agreement") by and between [SELLER ENTITY] and Buyer. All
capitalized terms used in this Certification but not otherwise defined herein shall have the
respective meanings assigned to such terms in the Agreement.
I hereby certify the following:
The performance test for the Facility demonstrated peak electrical output of MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (" <u>Installed Capacity</u> ").
[LICENSED PROFESSIONAL ENGINEER]
[LICENSED I ROI ESSIONAL ENGINEER]
By:
Its:
Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (" <u>Certification</u> ") is delivered by [SELLER ENTITY] (" <u>Seller</u> ") to Silicon Valley Clean Energy Authority, a California joint powers authority (" <u>Buver</u> ") in accordance with the terms of that certain Renewable Power Purchase Agreement dated (" <u>Agreement</u> ") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.						
Seller hereby certifies and represents to Buyer the following:						
1. Construction Start (as defined in <u>Exhibit B</u> of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;						
2. the Construction Start Date occurred on (the "Construction Start Date"); and						
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: (such description shall amend the description of the Site in Exhibit A of the Agreement).						
IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the day of						
[SELLER ENTITY]						
By:						
Its:						
Date:						

EXHIBIT K

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiry Date:

Beneficiary:

Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, California 94087 Attn: Girish Balachandran, CEO

Ladies and Gentlemen:

By the order of ______ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of Silicon Valley Clean Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as <u>Exhibit A</u>, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXXX-XXXX]] confirmed by [e-mail to [bank email address]] Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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

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

[Bank Name]	
[Insert officer name]	
[Insert officer title]	

Exhibit A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate
[Insert Bank Name and Address]
The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, 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 Renewable Power Purchase Agreement dated as of, 20 (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.
OR
Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.
3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.
You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority by wire transfer in immediately available funds to the following account:
[Specify account information]
Silicon Valley Clean Energy Authority, a California joint powers authority
Name and Title of Authorized Representative
Date

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this " <u>Guaranty</u> ") is entered into as of [] (the " <u>Effective Date</u> ") by and between [], a [] (" <u>Guarantor</u> "), and Silicon Valley Clean Energy Authority, a California joint powers authority (together with its successors and permitted assigns, " <u>Buver</u> ").					
Recitals					
A. Buyer and [SELLER ENTITY], a ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [], 20					
B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.					
C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.					
D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.					
<u>Agreement</u>					
1. <u>Guaranty</u> . For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA (the " <u>Obligations</u> "), including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA; <i>provided</i> , that the Guarantor's aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed Dollars (\$) (the " <u>Guaranteed Amount</u> "). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.					

Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may

2.

Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this

make a demand upon Guarantor (a "<u>Payment Demand</u>") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

- 3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) the anniversary of the Effective Date. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:
 - (i) the extension of time for the payment of any Guaranteed Amount, or
 - (ii) any amendment, modification or other alteration of the PPA, or
 - (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction:

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

- 4. <u>Waivers by Guarantor</u>. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:
- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Paragraph 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.
- 5. <u>Subrogation</u>. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Paragraph 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. <u>Notices</u>. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at	[] Attn: [] Fax: []
If delivered to Guarantor, to it at	[] Attn: [] Fax: []

- 8. <u>Governing Law and Forum Selection</u>. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Santa Clara, California.
- 9. <u>Miscellaneous</u>. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or

unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:
[]
By:
Printed Name:
Title:
BUYER:
[]
By:
Printed Name:
Title:
By:
Printed Name:
Title:

EXHIBIT M

[RESERVED]

EXHIBIT N

NOTICES

Grace Orchard Solar II, LLC ("Seller")	Silicon Valley Clean Energy Authority ("Buyer")
All Notices:	All Notices:
Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: Email: DL-NEXTERA-WEST- INTERNATIONAL- REGION@nexteraenergy.com and and Email: NEER-General- Counsel@nexteraenergy.com	Street: 333 W. El Camino Real, Suite 330 City: Sunnyvale, California 94087 Attn: Girish Balachandran, CEO Phone: (408) 721-5301 Email: girish@svcleanenergy.org
Reference Numbers: Duns: [To be provided separately] Federal Tax ID Number: [To be provided separately]	Reference Numbers: Duns: Federal Tax ID Number:
Invoices: Attn: Business Management Phone: E-mail: NEER-REVENUE- TEAM.SharedMailbox@nexteraenergy.com and DL-NEXTERA-WEST-INTERNATIONAL- REGION@nexteraenergy.com	Invoices: Attn: Power Supply Group Phone: (408) 721-5301 Email: SVCEinvoices@svcleanenergy.org

Grace Orchard Solar II, LLC ("Seller")	Silicon Valley Clean Energy Authority ("Buyer")
Scheduling: Attn: Email: dl-nepm-dayaheaddesk- wecc@nexteraenergy.com and	Scheduling: Attn: ZGlobal Phone: (916) 221-4327 Email: eric@zglobal.biz
nepm.realtimedesk@nexteraenergy.com Confirmations: Attn: Confirmation Email: DL-Confirmations-Juno- PMI@nexteraenergy.com	Confirmations: Attn: Monica Padilla, Director of Power Resources Phone: (408) 721-5301 x1009 Email: monica.padilla@svcleanenergy.org
Payments: Attn: Business Management Phone: E-mail: DL-NEXTERA-WEST-INTERNATIONAL- REGION@nexteraenergy.com	Payments: Attn: Finance Group Phone: (408) 721-5301 Email: SVCEinvoices@svcleanenergy.org
Wire Transfer: [Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date.] BNK: ABA: ACCT:	Wire Transfer: BNK: ABA: ACCT:

Grace Orchard Solar II, LLC Silicon Valley Clean Energy Authority ("Seller") ("Buyer") **Defaults:** With additional Notices of an Event of Default to: Hall Energy Law PC Grace OrchardSolar II. LLC Attn: Stephen Hall 700 Universe Blvd. Phone: (503) 313-0755 Juno Beach, FL 33408 Email: steve@hallenergylaw.com Attn: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com With a simultaneous copy provided to: Attn: General Counsel E-mail: NEER-General-Counsel@nexteraenergy.com and **Emergency Contact: Emergency Contact:** Attn: Monica Padilla, Director of Power Resources Street: 700 Universe Blvd. Phone: (408) 721-5301 x1009 City: Juno Beach, FL 33408 Email: monica.padilla@svcleanenergy.org Attn: Business Management Phone: Email: FPDC-Wind.SharedMailbox@nexteraenergy.com and DL-NEXTERA-WEST-INTERNATIONAL-

REGION@nexteraenergy.com

EXHIBIT O

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT AND AGREEMENT ([NAME OF CONTRACTING PARTY]) ([NAME OF ASSIGNED AGREEMENT])

This COLLATERAL ASSIGNMENT AGREEMENT (this "Consent"), dated as
of, 20[], is executed by and among [NAME OF CONTRACTING PARTY], a
[legal form of Contracting Party] organized under the laws of the State of [] (the
"Contracting Party"), [], a [] (the "Project Owner"), and
[], as collateral agent (in such capacity, together with its successors and permitted
assigns, the "Collateral Agent") for various financial institutions named from time to time as
Lenders under the Credit Agreement (as defined below) and any other parties (or any of their
agents) who hold any other secured indebtedness permitted to be incurred under the Credit
Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").
A. The Project Owner owns, operates and maintains []
(the "Project").
B. The Contracting Party and the Project Owner have entered into the
agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise
modified from time to time in accordance with the terms thereof and hereof, the "Assigned
Agreement").
C. The Borrower, the Project Owner, the other affiliates of the Borrower as
Guarantors, various financial institutions named therein from time to time as
Lenders,[], as the Administrative Agent and Collateral Agent, have entered
into a Credit Agreement, dated as of [] (as amended, modified or supplemented
from time to time, the "Credit Agreement"), providing for the extension of the credit facilities
described therein.
D. As security for the payment and performance by the Project Owner of its
obligations under the Credit Agreement and the other Financing Documents (as defined below)
and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its
right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement
to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of
[]between the Project Owner and the Collateral Agent (as amended,
restated, supplemented or otherwise modified from time to time in accordance with the terms
thereof, the "Security Agreement", and, together with the Credit Agreement and any other
financing documents relating to the issuance of the Notes, the "Financing Documents").
E. It is a requirement under the Credit Agreement that the Project Owner cause

the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

- 1. <u>Consent to Assignment</u>. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.
- 2. <u>Representations and Warranties</u>. The Contracting Party represents and warrants as follows:
- (a) <u>No Amendments</u>. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.
- (b) <u>No Previous Assignments</u>. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.
- (c) <u>No Termination Event: No Disputes.</u> After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a "<u>Termination Event</u>") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. RIGHT TO CURE.

- (a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an Event of Default by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; *provided*, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.
- (b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section [__] of the Assigned Agreement)]1or (ii) suspend the

¹ Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to

performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, which consent shall not be unreasonably withheld, delayed or conditioned, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section [] of the Assigned Agreement)]2, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. Collateral Agent will have the right, but not the obligation, to cure an Termination Event on behalf of Project Owner, only if Collateral Agent sends a written notice to Contracting Party before the later of (i) the expiration of any cure period under this Agreement, and (ii) fifteen (15) Business Days after Collateral Agent's receipt of notice of such Termination Event from Contracting Party, indicating Collateral Agent's intention to cure. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent shall have a period of ninety (90) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event (or such longer additional period if the Collateral Agent is unable to cure such Termination Event within such initial ninety (90) day period despite exercising commercially reasonable efforts); provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition; provided, further, that in the event of items (i) or (ii) above, such time period shall not exceed one hundred eighty (180) days. Any cure period for the Collateral Agent shall not commence until the later of (i) the end of the cure period of the Project Owner under the Assigned Agreement and (ii) written notice from the Contracting Party to the Collateral Agent of a Termination Event.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants,

terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

- (e) Following a Termination Event by the Project Entity under the Assigned Agreement, the Contracting Party may require the Collateral Agent, if the Collateral Agent has provided the notice set forth in subsection (c) above, to provide to Contracting Party a report concerning:
 - (i) The status of efforts by Collateral Agent to develop a plan to cure the Termination Event;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (iv) Any other information which Contracting Party may reasonably require related to the development, implementation and timetable of the cure plan.

Collateral Agent must provide the report to Contracting Party within twenty (20) Business Days after Notice from Contracting Party requesting the report. Contracting Party will have no further right to require the report with respect to a particular Termination Event after that Termination Event has been cured.

REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT (I) THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT'S REQUEST, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT, OR (II) IF THE COLLATERAL AGENT OR ITS DESIGNEE, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE) AFTER ANY SUCH REJECTION OR TERMINATION OF THE ASSIGNED AGREEMENT, PROMPTLY AFTER THE CONTRACTING PARTY'S WRITTEN REQUEST, THE COLLATERAL AGENT MUST ITSELF OR MUST CAUSE ITS DESIGNEE TO PROMPTLY ENTER INTO A NEW AGREEMENT WITH THE CONTRACTING PARTY HAVING SUBSTANTIALLY THE SAME TERMS AS THE ASSIGNED AGREEMENT FOR THE REMAINING TERM THEREOF, PROVIDED THAT IN THE EVENT A DESIGNEE OF THE COLLATERAL AGENT, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE), SUCH DESIGNEE SHALL BE APPROVED BY THE CONTRACTING PARTY, NOT TO BE UNREASONABLY WITHHELD.

- SUBSTITUTE OWNER. THE CONTRACTING **PARTY** 5. ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS. THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT. SUCH SALE OR TRANSFER MAY BE MADE ONLY TO AN ENTITY THAT (I) MEETS THE DEFINITION OF "PERMITTED TRANSFEREE" AS DEFINED IN THE ASSIGNED AGREEMENT AND (II) IS AN ENTITY THAT THE CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS THE "CUSTOMER" UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT'S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER SOLELY TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT.
- 6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING PARTY'S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.
- 7. <u>NO AMENDMENTS.</u> THE CONTRACTING PARTY ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT

OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT. OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED, AMEND OR MODIFY THE ASSIGNED AGREEMENT IN ANY MATERIAL RESPECT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO A MATERIAL PROVISION OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE BORROWER OR PROJECT OWNER (AS APPLICABLE UNDER THE FINANCING DOCUMENTS) A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER, OR CONSENT IS BEING MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS. WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE BORROWER OR PROJECT OWNER (AS APPLICABLE UNDER THE FINANCING DOCUMENTS) TO HAVE OBTAINED THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, LENDERS, OR OTHER PARTIES THERETO.

- 8. <u>ADDITIONAL PROVISIONS</u>. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]
- NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A) THE DATE OF PERSONAL DELIVERY, (B) POSTAGE PREPAID, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HEREWITH), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY, OR (C) IF TRANSMITTED BY FACSIMILE, THE DATE WHEN SENT AND FACSIMILE CONFIRMATION IS **RECEIVED:** PROVIDED THAT ANY **FACSIMILE** COMMUNICATION SHALL BE FOLLOWED PROMPTLY BY A HARD COPY ORIGINAL THEREOF BY EXPRESS COURIER:

The Collateral Agent:					
C	[]			
	Attn: []			
	Telephone No.: []		
	Facsimile No.: []		
The Project Owner:			<u>—</u>		

he Contracting Party:		
		<u> </u>
10. <u>SUCCESSORS</u> G UPON AND SHALL INU		ONSENT SHAI

- 10. <u>SUCCESSORS AND ASSIGNS</u>. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.
- 11. <u>COUNTERPARTS</u>. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.
- 12. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF _____.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By:		
•	Name:	
	Title:	
г	1	
L	Collateral Agent	
as C	ollateral Agent	
Bv:		
J	Name:	
	Title:	
Ack	knowledged and Agreed:	
г		7
L		
D.,.		
By:	Name:	
	Title:	
	1 IUC.	

Schedule I

Assigned Agreement

Schedule II

Payment Instructions (Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement (Section 2(c))]

EXHIBIT P

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

(Power Purchase Agreement)

	ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), dated as of, 202_, is provided by, a
	RECITALS
	Buyer and
solar project (Solar Project).
В.	Pursuant to that certain [describe Lender financing agreement].
	Pursuant to Section [] of the [Lender financing agreement], the [Lenders] d that this Estoppel Certificate be delivered as a condition precedent to the n of the transactions described therein.
	THEREFORE, in consideration of the foregoing recitals, Buyer hereby sees and acknowledges as follows:
1.	No default or event of default with respect to Buyer, nor, to the knowledge of Buyer, any other party has occurred under the Power Purchase Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Project Company or Buyer to terminate the Power Purchase Agreement.
2.	There exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Power Purchase Agreement.

- 3. Each representation or warranty made or given by Buyer in Section [__] of the Power Purchase Agreement is complete, true and correct.
- 4. As of the date hereof, (i) the Power Purchase Agreement is in full force and effect and has not been assigned, amended, supplemented or modified, (ii) there are no pending or threatened disputes or legal proceedings between Buyer and the Project Company, (iii) there is no pending or, to the knowledge of Buyer, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to affect the legality, validity or enforceability of the Power Purchase Agreement, (iv) Buyer is not aware of any event, act, circumstance or condition constituting an event of force majeure under the Power Purchase Agreement, and (v) the Project Company owes no indemnity payments or other amounts to Buyer under the Power Purchase Agreement.
- 5. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.
- 6. Buyer agrees that any notices required to be delivered to Seller under Section _____ of the Power Purchase Agreement, including notices of an [Event of Default], shall be delivered by Buyer to each of the [Lenders] at their respective notice addresses set forth on Exhibit A hereto, and Buyer agrees that the [Lenders] shall have the right (but not the obligation) to cure the defaults listed in any notice of default in accordance with Section [__] of the Power Purchase Agreement within a cure period that is the same length as the cure period afforded to Seller under the Power Purchase Agreement with respect to such event (but in no event less than 90 days), and which starts on the later of (i) the same date that the Seller's cure period expires under the Power Purchase Agreement or (ii) the date that the [Lenders] receive such notice that lists the default or defaults of the Seller under the Power Purchase Agreement.
- 7. [Additional provisions to be included if necessary to clarify the Power Purchase Agreement.]
- 8. This Estoppel Certificate shall be governed by the laws of ______, without regard to principles of conflict of law.

[Signature page follows]

o 1		WITNESS its undersign						
				By: _				
				Nam	ie:			
			,	Title	:			

EXHIBIT Q

FORM OF BUYER LIMITED ASSIGNMENT AGREEMENT

This Buyer Limited Assignment Agreement (this "Agreement") is entered into as of
[] (the "Assignment Agreement Effective Date") by and among [Seller Entity], a [state]
[type of company] ("PPA Seller"), Silicon Valley Clean Energy Authority, a joint powers
authority and a community choice aggregator organized under the laws of the State of California
("PPA Buyer"), and Morgan Stanley Capital Group Inc., a Delaware corporation ("MSCG").

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain PPA identified on Appendix 1 hereto;

WHEREAS, in connection with a prepaid electricity transaction between [____] ("Issuer") and Morgan Stanley Energy Structuring, L.L.C. ("MSES"), and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to MSCG, and MSCG wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

WHEREAS, pursuant to this Agreement, during the Assignment Period, MSCG will receive the Assigned Product in the Assigned Monthly Quantity and MSCG will deliver such Assigned Product to MSES, which will redeliver such Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, during the Assignment Period, MSCG will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and MSCG (the "Parties" hereto; each is a "Party") agree as follows:

AGREEMENT

1. Definitions.

Unless the context otherwise specifies or requires, or defined below, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Agreement" has the meaning specified in the first paragraph above.

"Assigned Monthly Quantity" means the first [___] MWhs of Assigned Product delivered in accordance with the PPA by PPA Seller in each Month during the Assignment Period.

"Assigned Product" means (i) Facility Energy and (ii) Green Attributes (PCC1).

"Assigned Rights and Obligations" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Monthly Quantity of Assigned Product in each Month during the Assignment Period, as such rights may be limited or further described in the "Further Information" section on Appendix 1, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to MSCG hereunder, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

"Assignment Early Termination Date" has the meaning specified in Section 4(b).			
"Assignment Period" has the meaning specified in Section 4(a).			
"Assignment Period End Date" means 11:59:59 p.m. pacific prevailing time on [].			
"Assignment Period Start Date" means [].			
"Custodian" means The Bank of New York Mellon Trust Company, N.A., a national banking association.			
"Delivered Product Payment Obligation" has the meaning specified in Section 3(a).			
"Issuer" means [], a [] [NOTE: This will be the JPA or other entity formed for purposes of issuing municipal bonds for the prepaid transaction.].			
"Month" means a calendar month.			
"Monthly Gross Amount" has the meaning specified in Section 3(c).			
"MSCG" has the meaning specified in the first paragraph of this Agreement.			
"MSES" means Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company.			
"PPA Buyer" has the meaning specified in the first paragraph of this Agreement.			
"PPA Seller" has the meaning specified in the first paragraph of this Agreement.			
"Prepaid Agreement" means that certain Prepaid Energy Sales Agreement dated as of [] by and between MSES and Issuer.			
"Prepay Power Supply Contract" means that certain Prepay Power Supply Contract dated [] by and between PPA Buyer and Issuer.			
"Receivables" has the meaning given to such term in Section 3(g).			
"Retained Rights and Obligations" has the meaning specified in Section 3.			
2. Transfer and Undertakings.			

- (a) PPA Buyer hereby assigns, transfers and conveys to MSCG all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Product in the Assigned Monthly Quantity during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSCG the Assigned Rights and Obligations during the Assignment Period.
- (b) PPA Seller hereby consents to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and Assigned Rights and Obligations to MSCG and the exercise and performance by MSCG of the Assigned Rights and Obligations during the Assignment Period, subject to the terms of this Agreement and subject to the express condition that nothing in this Agreement or PPA Seller's consent shall be deemed to modify or amend PPA Seller's rights and obligations under the PPA.
- (c) MSCG hereby accepts such assignment, transfer and conveyance of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period.

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's rights and obligations under the PPA, and that all rights and obligations (including without limitation obligations with respect to the provision of PPA Buyer financial statements, Buyer Credit Notices, and Buyer Credit Support, and payment for any Product not included in the Assigned Product, any Assigned Product not included in the Assigned Monthly Quantity of Assigned Product, and any other amounts owed under the PPA) arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "Retained Rights and Obligations" that are retained solely by PPA Buyer, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

- (a) Limited to Delivered Product Payment Obligation. MSCG's sole payment obligations hereunder will be to make the payments into the Custodial Account as described on Appendix 1 (the "Delivered Product Payment Obligation"). MSCG and PPA Buyer each agree to instruct the Custodian in accordance with Section 3(c) hereof to pay PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section 8.2 of the PPA for a quantity up to, but not exceeding, the Assigned Monthly Quantity, at the Renewable Rate as set forth in the PPA. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period, and shall remain so responsible to make such payments by the times and on the terms set out in the PPA in the event that either (i) MSCG does not make the payments into the Custodial Account as described above or (ii) the Custodian does not make the payments to the PPA Seller from the Custodial Account as described above.
- (b) **Retained Rights and Obligations**. Any claims arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSCG, and whether arising before, during or after the Assignment Period, in each case excluding the

Delivered Product Payment Obligation (*provided*, *however*, PPA Buyer still remains liable that all amounts due and owing under the PPA are timely paid), will be included in the Retained Rights and Obligations, and any such claim will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

- PPA Buyer a monthly invoice of amounts owing under the PPA, which invoice shall show the total amount due to PPA Seller under the PPA for such Month (the "Monthly Gross Amount"). PPA Buyer and MSCG covenant and agree to instruct the Custodian to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA, provided, that the liability of MSCG hereunder to PPA Seller is limited as described on Appendix 1. PPA Buyer and MSCG may agree in a separate writing as to the allocation of the Monthly Gross Amount between PPA Buyer and MSCG of amounts paid by the Custodian to PPA Seller hereunder. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA.
- **Scheduling**. All scheduling of Assigned Product and other communications related (d) to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that during the Assignment Period (i) title to Assigned Product will pass to MSCG upon delivery by PPA Seller at the Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to MSES, Issuer and then to PPA Buyer upon delivery by MSCG at the same point where title is passed to MSCG pursuant to clause (i) above; and (iii) PPA Buyer will provide copies to MSCG of (A) any notice of a Force Majeure Event delivered under the PPA, (B) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in an Event of Default, (C) annual forecasts and monthly forecasts with respect to the Assigned Product delivered by PPA Seller under Sections 4.3(a) and 4.3(b) of the PPA, (D) invoices delivered by PPA Seller under Section 8.1 of the PPA (with a copy to the Custodian if and to the extent retained by PPA Buyer and MSCG), and (E) any other information reasonably requested by MSCG relating to Assigned Product. PPA Buyer shall promptly reimburse PPA Seller for any additional costs or expenses incurred by PPA Seller as a result of this subsection 3(d).
- (e) Amendments. PPA Buyer will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to MSCG relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSCG's rights or obligations under this Agreement until and unless MSCG receives written notice thereof.
- (f) **PPA Seller Disclaimer**. Notwithstanding anything to the contrary in this Agreement including without limitation Section 2(b) and Section 6(i) hereof, the Parties hereby agree that if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to this Agreement, or (2) PPA Seller's performance of any obligation under this Agreement, including without limitation if PPA Seller makes any change to the recipient of the WREGIS Certificates pursuant to <u>Appendix 1</u> hereof, fails to meet any of the requirements of the PPA, then PPA Seller shall not be deemed to be in breach of any obligation in the PPA, including without limitation any representation or warranty therein.

(g) **Setoff of Receivables**. Pursuant to the Prepaid Agreement, MSES has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by MSCG pursuant to the Assigned Rights and Obligations, MSES may sell such Receivables to MSCG and MSCG may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; *provided*, *however*, that (1) at no time shall PPA Seller be required to pay MSCG for any amounts by which such Receivables exceed any Delivered Product Payment Obligations, and (2) at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice.

4. Assignment Period; Assignment Early Termination.

- (a) Assignment Period. The "Assignment Period" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date; and further provided that the Assignment Period will automatically terminate upon the expiration or early termination of either the Delivery Term or the PPA.
- (b) **Early Termination**. An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:
 - i. delivery of a written notice of termination by either MSCG or PPA Buyer to each of the other Parties hereto;
 - ii. delivery of a written notice of termination by PPA Seller to each of MSCG and PPA Buyer following MSCG's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for three (3) Business Days following receipt by MSCG of written notice thereof;
 - iii. delivery of a written notice by PPA Seller if any of the events described in Section 1.1, definition of "Bankrupt" of the PPA, occurs with respect to MSCG; or
 - iv. delivery of a written notice by MSCG if any of the events described in Section 1.1, definition of "Bankrupt" of the PPA, occurs with respect to PPA Seller.
- (c) Reversion of Assigned Rights and Obligations. The Assignment Period will end at the end of the last delivery hour on the date specified in the termination notice provided pursuant to Section 4(b), which date shall not be earlier than the end of the last day of the Month in which such notice is delivered if termination is pursuant to clause (b)(i) or (b)(ii) above. The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date and at the expiration of the Assignment Period the Assigned Rights and Obligations will revert from MSCG to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date shall immediately and automatically revert from MSCG to PPA Buyer, provided that (i) MSCG shall remain responsible

for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to MSCG prior to the Assignment Early Termination Date or prior to the expiration of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date or the expiration of the Assignment Period.

5. Representations and Warranties.

- (a) **Copy of PPA**. As of the Assignment Agreement Effective Date, PPA Seller and PPA Buyer represent and warrant to MSCG that a true, complete, and correct copy of the PPA as of such date is attached hereto as <u>Appendix 3</u>.
- (b) **No Default**. As of the Assignment Agreement Effective Date, PPA Seller and PPA Buyer represent and warrant to MSCG that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.
- (c) **Investment Grade Credit Rating**. MSCG represents and warrants to PPA Seller, as of the Assignment Agreement Effective Date, that it (i.e., MSCG) has an Investment Credit Rating.
- (d) **Representations**. Each Party represents to each of the other Parties as of the Assignment Agreement Effective Date:
 - i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
 - ii. **Powers**. It has the power to execute, deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.
 - iii. **No Violation or Conflict.** Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency presently in effect, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.
 - iv. **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this

Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

- v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective 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)).
- vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bonafide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.
- viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

6. Miscellaneous.

Article 18 (Confidential Information), Sections 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.5 (Severability), 19.7 (Counterparts; Electronic Signatures), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.11 (Forward Contract; Inapplicability/Waiver of Bankruptcy Code Section 366) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein. For avoidance of doubt, and notwithstanding anything to the contrary in this Agreement: (i) nothing in this Agreement shall modify any provision of the PPA; (ii) PPA Buyer remains obligated to perform all its obligations under the PPA notwithstanding the limited assignment under this Agreement (including without limitation any such obligations not timely performed by MSCG under this Agreement) and any failure by MSCG to make payments to PPA Seller when due under the PPA shall be a Buyer Event of Default under the PPA if not cured within the applicable cure period specified in

Section 11.1(a)(i) of the PPA; (iii) this Agreement shall not purport to convey or otherwise allege any right of PPA Buyer or MSCG to make any prepayment to PPA Seller under the PPA or to file or impose any lien on the Facility; and (iv) neither MSCG nor PPA Buyer shall make any assignment of its rights or delegation of its obligations under this Agreement without the prior written consent of PPA Seller, which it may withhold in its sole discretion.

7. Costs and Expenses.

PPA Buyer and MSCG will each pay its own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement. PPA Buyer shall reimburse PPA Seller for its out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred in connection with this Agreement, including in connection with obtaining required consents from its lenders or other financing parties, as well as reimburse PPA Seller as set forth above in Section 3(c) of this Agreement.

. . .

8. Notices.

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be delivered in accordance with PPA Section 9.2 and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify MSCG of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to MSCG shall be provided to the address set forth in <u>Appendix 2</u>. Each Party may update its address from time to time by notice to the other Parties.

9. Governing Law, Arbitration, Judicial Reference.

- (a) This Agreement and the rights and duties of the Parties under this Agreement will 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.
- (b) **Arbitration**. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, nonappealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall select one person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator. The JAMS appointed arbitrator shall serve as the chairperson (the "chairperson"). If any of MSCG and PPA Buyer, on the one hand, or PPA Buyer, on the other hand, is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energyrelated transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any

hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 9(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 9(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

- (c) **Judicial Reference.** Without limiting the provisions in Section 9(b), if Section 9(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 9(c)(i).
 - i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "Disputing Party") shall provide the other Parties (the "Responding Parties") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty 60 days after receipt of the Dispute Response, (the "Negotiation Period"), then any Party may provide to the other Parties written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this Section 9.
 - ii. <u>Applicability; Selection of Referees</u>. Within 10 days of the delivery of an Impasse Notice, each of MSCG and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall nominate one (1) referee. The two (2) referees (the "**Party-Appointed**"

Referees") shall unanimously appoint one additional referee (the "Additional Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Additional Referee shall be an active or retired California state or federal judge (the "Head Referee"). Each of the Party-Appointed Referees and the Additional Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

(A) If the Party-Appointed Referees are unable to agree on the Additional Referee within 45 days from delivery of the Impasse Notice, then the Additional Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and MSCG, on the one hand, and PPA Seller, on the other hand, shall have one (1) peremptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

- (A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the Referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Head Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.
- (B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Head Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.
- (C) Except as expressly set forth herein, the Head Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Head Referee, in San Francisco, California.
- (D) All proceedings and hearings conducted before the Referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the Referees, and the Referees will be provided a courtesy copy of the transcript. The Party

making such a request shall have the obligation to arrange for and pay the court reporter.

- iv. <u>Decision</u>. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.
- V. <u>Expenses</u>. Each of MSCG, PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller.
- 10. U.S. Resolution Stay. If each of the Parties hereto have not adhered to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the "ISDA U.S. QFC Protocol"), the terms of the ISDA U.S. QFC Protocol shall be incorporated into and form a part of this Agreement. For purposes of incorporating the ISDA U.S. QFC Protocol, each Party shall be deemed to have the same status as "Regulated Entity" and/or "Adhering Party" (as such terms are defined therein) applicable to it under the ISDA U.S. QFC Protocol and this Agreement shall be deemed to be a "Protocol Covered Agreement" (as defined therein).

	WITNESS WHEREOF, the Parties he forth above.	ave executed this Agreement effective as of the date first
[Sel	ler Entity]	
By:		
	Name:	
	Title:	
SIL	ICON VALLEY CLEAN ENERGY	AUTHORITY
By:		
	Name:	
	Title:	
МО	RGAN STANLEY CAPITAL GRO	UP INC.
By:		
	Name:	
	Title:	

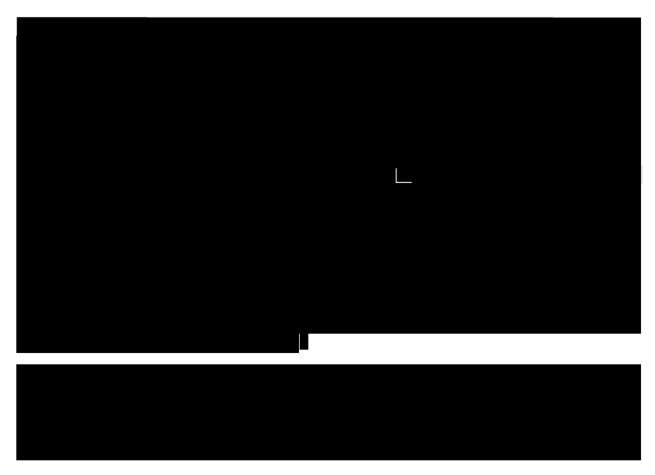
Appendix 1

Assigned Rights and Obligations

PPA: Renewable Power Purchase Agreement dated as of [____], by and between PPA Buyer and PPA Seller, as may be amended from time to time.

Delivery Point: Facility PNode (as defined in Exhibit A of the PPA)

Further Information: PPA Seller shall transfer or, to the extent applicable, continue to transfer, the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA pursuant to Section 4.7 of the PPA, *provided* that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both MSCG and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month after such notice period has expired, unless otherwise agreed. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA. All Assigned Product delivered by PPA Seller to MSCG shall be a sale made at wholesale, with MSCG reselling all such Assigned Product.



Appendix 2

MSCG Notice Information

[To be completed before signing.]

Appendix 3

Copy of PPA

[To be attached.]

EXHIBIT R

METERING DIAGRAM

Preliminary Metering Diagram set forth below. A final version of the Metering Diagram will be provided to Buyer at least thirty (30) days before the Commercial Operation Date, which will replace the attached version for purposes of this Agreement.

[Redacted]

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Yellow Pine Solar III, LLC, a Delaware limited liability company

Buyer: Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCE")

<u>Description of Facility</u>: A 115 MW_{AC} / 460 MWh battery energy storage system, located in Clark County, Nevada, as further described in <u>Exhibit A</u>.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	6/1/2024
Executed Interconnection Agreement	Completed
Federal and State Discretionary Permits	10/31/2024
Network Upgrades Completed	10/15/2024
Guaranteed Construction Start Date	11/1/2024
Initial Synchronization	4/1/2025
Guaranteed Commercial Operation Date	8/1/2025

<u>Delivery Term</u> : The period for Product delivery will be for fifteen (15) Contract Years.
Guaranteed Capacity MW _{AC} of Installed Capacity
Dedicated Interconnection Capacity : MW _{AC}
Guaranteed Availability:
Guaranteed Efficiency Rate:

Contract Price:

Contract Year	Contract Price
1 – 15	

SVCE 7.2123 Draft - CONFIDENTIAL

Product:

- □ Discharging Energy
- ☐ Installed Capacity and Effective Capacity
- □ Capacity Attributes

Scheduling Coordinator: Seller or Seller's designated agent

Security Amount:

Development Security:	
Performance Security:	

TABLE OF CONTENTS

		Page
ARTICLE 1	DEFINITIONS	1
1.1	Contract Definitions	1
1.2	Rules of Interpretation	
ARTICLE 2	TERM; CONDITIONS PRECEDENT	24
2.1	Contract Term.	
2.2	Conditions Precedent	
2.3	Development; Construction; Progress Reports	
2.4	Remedial Action Plan.	
2.5	Pre-Commercial Operation Actions	26
2.6	Increase of Full Capacity Deliverability Status of Facility by Up to 5 MW to	
	Maximize Facility's Ability to Provide CAISO Grid Stability Benefits	
ARTICLE 3	PURCHASE AND SALE	27
3.1	Product	27
3.2	Discharging Energy	27
3.3	Capacity Attributes	27
3.4	Ancillary Services	
3.5	Resource Adequacy Failure.	
3.6	Buyer's Re-Sale of Product	
3.7	Storage Capacity Interim Product	
3.8	Compliance Expenditure Cap	
3.9	Ownership of Incentives	
3.10	Future Environmental Attributes	31
ARTICLE 4	OBLIGATIONS AND DELIVERIES	32
4.1	Delivery	32
4.2	Interconnection	
4.3	Performance Guarantees.	
4.4	Facility Testing	
4.5	Testing Costs and Revenues	
4.6	Facility Operations	
4.7	Dispatch Notices	
4.8	Facility Unavailability to Receive Dispatch Notices	34
4.9	Energy Management	
4.10	Capacity Availability Notice.	37
4.11	Scheduling Coordination.	
4.12	Reduction in Delivery Obligation	37
ARTICLE 5	TAXES	38
5.1	Allocation of Taxes and Charges	38
5.2	Cooperation	
ARTICLE 6	MAINTENANCE AND REPAIR OF THE FACILITY	39

6.1	Maintenance of the Facility.	39
6.2	Maintenance of Health and Safety	39
6.3	Shared Facilities.	39
ARTICLE	7 METERING	39
7.1	Metering	39
7.2	Meter Verification.	
ARTICLE	8 INVOICING AND PAYMENT; CREDIT	41
8.1	Invoicing	41
8.2	Payment	41
8.3	Books and Records	42
8.4	Payment Adjustments; Billing Errors	42
8.5	Billing Disputes	42
8.6	Netting of Payments	42
8.7	Seller's Development Security	43
8.8	Seller's Performance Security	43
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral	43
8.10	Financial Statements	44
ARTICLE	9 NOTICES	44
9.1	Addresses for the Delivery of Notices	44
9.2	Acceptable Means of Delivering Notice	
	10 FORCE MAJEURE	
10.1		
10.2	J. Company of the com	
10.3		
10.4	Termination Following Force Majeure Event	47
ARTICLE	11 DEFAULTS; REMEDIES; TERMINATION	48
11.1	Events of Default	48
11.2	Remedies; Declaration of Early Termination Date.	51
11.3		
11.4	· · · · · · · · · · · · · · · · · · ·	
11.5		
11.6		
11.7		
ARTICLE	12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	52
12.1	No Consequential Damages	52
12.2		
	13 REPRESENTATIONS AND WARRANTIES; COVENANTS	
13.1	Seller's Representations and Warranties	54

13.2	Buyer's Representations and Warranties	55
13.3	General Covenants	
13.4	Prevailing Wage	56
13.5	RETA Regulations	56
ARTICLE 14	ASSIGNMENT	57
14.1	General Prohibition on Assignments	57
14.2	Collateral Assignment; Financing Cooperation	
14.3	Permitted Assignment by Seller	
ARTICLE 15	DISPUTE RESOLUTION	58
15.1	Governing Law.	58
15.2	Venue	
15.3	Disupte Resolution.	58
ARTICLE 16	INDEMNIFICATION	58
16.1	Mutual Indemnity.	58
16.2	Notice of Claim.	
16.3	Failure to Provide Notice	59
16.4	Defense of Claims.	59
16.5	Subrogation of Rights.	60
16.6	Rights and Remedies are Cumulative	60
ARTICLE 17	INSURANCE	60
17.1	Insurance	60
ARTICLE 18	CONFIDENTIAL INFORMATION	61
18.1	Definition of Confidential Information	61
18.2	Duty to Maintain Confidentiality	62
18.3	Irreparable Injury; Remedies	
18.4	Disclosure to Lenders, Etc.	63
18.5	Public Announcements	63
ARTICLE 19	MISCELLANEOUS	63
19.1	Entire Agreement; Integration; Exhibits	63
19.2	Amendments	
19.3	No Waiver	63
19.4	No Agency, Partnership, Joint Venture or Lease	63
19.5	Severability	
19.6	Mobile-Sierra	
19.7	Counterparts; Electronic Signatures	64
19.8	Electronic Delivery	
19.9	Binding Effect	
19.10	No Recourse to Members of Buyer	
19.11	Forward Contract; Inapplicability/Waiver of Bankruptcy Code Section	
	366	
19.12	Further Assurances	65

19.13	Changes in Electric Market Design
Exhibits:	
Exhibit A	Facility Description
Exhibit B	Major Project Development Milestones and Commercial Operation
Exhibit C	Compensation
Exhibit D-1	Scheduling Coordinator Responsibilities
Exhibit D-2	Buyer and Seller Operating Coordination
Exhibit E	Progress Reporting Form
Exhibit F	Form of Monthly Expected Available Capacity Report
Exhibit G	Form of Daily Availability Notice
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Capacity and Efficiency Rate Test Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Capacity and Efficiency Rate Tests
Exhibit P	Facility Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Form of Collateral Assignment Agreement
Exhibit T	Form of Estoppel Certificate

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("<u>Agreement</u>") is entered into as of July [__], 2023 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

1.1 <u>Contract Definitions</u>. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"AC" means alternating current.

"Acceptable Issuer" means a U.S. commercial bank, or a foreign bank with a U.S. branch, with such bank having at least and having a Credit Rating of

"Accepted Compliance Costs" has the meaning set forth in Section 3.8(b).

"AD/CVD" means antidumping and/or countervailing duty.

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transfer" and "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by", and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation, storage, or transmission assets (such as a "yield co") controlled by Seller, NextEra Energy, Inc. or

an Affiliate of NextEra Energy, Inc., NextEra Energy Partners, LP ("<u>NEP</u>"), NextEra Energy Operating Partners, LP ("<u>NEOP</u>"), and NextEra Energy Capital Holdings, Inc. ("<u>NEECH</u>"), and their respective direct or indirect subsidiaries.

"After-Tax Basis" means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the "Base Payment"), supplemented by a further payment (the "Additional Payment") to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

"<u>Agreement</u>" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"Ancillary Services" means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff. For avoidance of doubt, the Ancillary Services do not include black start.

"Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.

"Automatic Generation Control" or "AGC" has the meaning set forth in the CAISO Tariff.

"Availability Adjustment" has the meaning set forth in Exhibit C.

"Availability Notice" has the meaning set forth in Section 4.10(b).

"<u>Availability Standards</u>" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

"<u>Available Capacity</u>" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

"Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"<u>Business Day</u>" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

"Buyer" means Silicon Valley Clean Energy Authority, a California joint powers authority.

"<u>Buyer Default</u>" means a failure by Buyer (or its agents) to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.

"Buyer Dispatched Test" has the meaning in Section 4.4(c).

"<u>CAISO</u>" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time the quantity of Charging Energy and Discharging Energy and the provision of Ancillary Services.

"CAISO Balancing Authority Area" has the meaning set forth in the CAISO Tariff.

"<u>CAISO Certification</u>" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all applicable Ancillary Services, PMAX, and PMIN.

"CAISO COM COD" means the next day after Seller achieves CAISO COM COD Approval.

"CAISO COM COD Approval" means the approval email or other documentation sent by CAISO approving the commercial operation of at least 95% of the Facility's Guaranteed Capacity under the CAISO's COM process, which may take the form of an email from CAISO Resource Implementation Management System (RIMS) titled similar to "Notification of Commercial Operation (COD)" or "Notification of Commercial Operation for Markets (COM)".

"CAISO Dispatch" means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol,

communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW_{AC} rate for a specified period of time or amount of MWh.

"CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"CAISO Operating Order" means the Operating Instruction or Dispatch Instruction, as each are defined in the CAISO Tariff.

"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.

"Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

"Capacity Damages" has the meaning set forth in Section 5 of Exhibit B.

"Change in Law" means the occurrence, after the Effective Date, of any of the following: (a) the adoption or implementation of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) any change to a Resource Adequacy Ruling; (d) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CEC or the CPUC or its Energy Division, or (e) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC.

"Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

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

provided, *further*, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

"Charging Energy" means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use to the extent such Electrical Losses and Station Use are not already reflected in the Facility Meter measurements.

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO to Seller, directing the Facility to charge at a specific MW_{AC} rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

"Claim" has the meaning set forth in Section 16.2.

pursuant to Section 5 of Exhibit B.

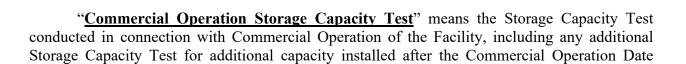
"COD Certificate" has the meaning set forth in Exhibit B.

"Collateral Assignment Agreement" has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit S.

"Commercial Operation" has the meaning set forth in Exhibit B.

"Commercial Operation Date" has the meaning set forth in Exhibit B.

"Commercial Operation Delay Damages" means an amount equal



"Communications Protocols" means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

"Compliance Actions" has the meaning set forth in Section 3.8(a).

"Compliance Expenditure Cap" has the meaning set forth in Section 3.8.

"Confidential Information" has the meaning set forth in Section 18.1.

"Construction Start" has the meaning set forth in Exhibit B.

"Construction Start Date" has the meaning set forth in Exhibit B.

"Contract Price" has the meaning set forth on the Cover Sheet.

"Contract Term" has the meaning set forth in Section 2.1(a).

"Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

"Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

"CPM Soft Offer Cap" has the meaning set forth in the CAISO Tariff.

"CPUC" means the California Public Utilities Commission, or any successor agency performing similar statutory functions.

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements (for clarification purposes NextEra Energy Inc.'s guaranty of NEECH shall not be considered a third-party enhancement)) 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, Fitch or Moody's. If ratings by Fitch, S&P and Moody's are not equivalent, the two (2) highest ratings shall apply.

"Cumulative Year-to-Date Storage Level" has the meaning set forth in Exhibit Q.

"Cure Plan" has the meaning set forth in Section 11.1(b)(v).

"Curtailment Order" means any of the following:

- (a) CAISO orders, directs, alerts, or provides notice to a Party or the SC, including a CAISO Operating Order, to curtail receipts of Charging Energy or deliveries of Discharging Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;
- (b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

- (c) a curtailment ordered by CAISO or the Transmission Provider; or
- (d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

"Daily Delay Damages" means an amount equal to

"Damage Payment"

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"<u>Dedicated Interconnection Capacity</u>" means an instantaneous amount of Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"<u>Delivery Point</u>" has the meaning set forth in <u>Exhibit A</u>.

"<u>Delivery Term</u>" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"<u>Development Cure Period</u>" has the meaning set forth in <u>Exhibit B</u>.

"<u>Development Security</u>" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"<u>Discharging Energy</u>" means the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use to the extent such Electrical Losses and Station Use are not already reflected in the Facility Meter measurements.

"<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO to Seller, directing the Facility to discharge at a specific MW_{AC} rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

"Disclosing Party" has the meaning set forth in Section 18.1.

"<u>Dispatch Notice</u>" means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO or Buyer to Seller, directing the Facility to charge or discharge Energy; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions.

"DOC" means the U.S. Department of Commerce.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"Effective Capacity" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW_{AC} at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point to the extent such Electrical Losses are not already reflected in the Facility Meter measurements) as determined pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Capacity (with respect to any other Storage Capacity Test).

"Effective Date" has the meaning set forth on the Preamble.

"Effective Flexible Capacity" or "EFC" has the meaning set forth in the CAISO Tariff.

"<u>Efficiency Rate</u>" means the tested rate calculated pursuant to Sections II.I(2) and III(A) of <u>Exhibit O</u> by dividing Discharging Energy by Charging Energy.

"Efficiency Rate Liquidated Damages" has the meaning set forth in Exhibit C.

"<u>Electrical Losses</u>" means all transmission or transformation losses (a) between the Delivery Point and the Facility associated with delivery of Charging Energy, and (b) between the Facility and the Delivery Point associated with delivery of Discharging Energy, each calculated in accordance with CAISO approved methodologies applicable to revenue metering.

"Energy" means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

"Energy Management System" or "EMS" means the Facility's energy management system.

"Estoppel Certificate" has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit T.

"Event of Default" has the meaning set forth in Section 11.1.

"Excused Event" has the meaning set forth in Exhibit P.

"Executed Interconnection Agreement Milestone" means the date for completion of execution of the Interconnection Agreement by Seller (or Seller's Affiliate) and the PTO as set forth on the Cover Sheet.

"<u>Facility</u>" means the storage facility described on the Cover Sheet and in <u>Exhibit A</u>, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

"<u>Facility Meter</u>" means the CAISO Approved Meter that will measure all Charging Energy and Discharging Energy.

"Facility Metering Point" means the location(s) of the Facility Meter shown in Exhibit R.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"Fitch" means Fitch Ratings Ltd., or its successor.

"Flexible Capacity" has the meaning set forth in the CAISO Tariff.

"<u>Flexible RAR</u>" means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"<u>Forced Facility Outage</u>" means an unexpected failure of one or more components of the Facility that prevents Seller from receiving Charging Energy or making Discharging Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"<u>Full Capacity Deliverability Status</u>" or "<u>FCDS</u>" has the meaning set forth in the CAISO Tariff.

"Future Environmental Attributes" shall mean, except to the extent set forth in the last sentence of this definition, any and all attributes (other than Incentives) under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the storage and discharge of electrical energy by the Facility. Future Environmental Attributes do not include Tax Benefits, including without limitation production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"Gains" means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

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

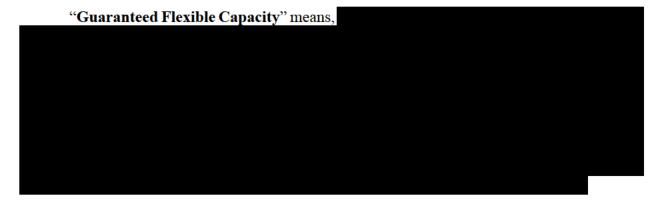
"Guaranteed Availability" means the minimum guaranteed Monthly Capacity Availability of the Facility in each month of the Delivery Term, as set forth on the Cover Sheet.

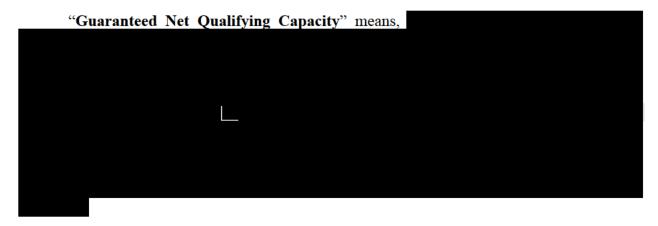
"Guaranteed Capacity" means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW_{AC} at the Delivery Point (i.e., measured at the Facility Meter as such meter readings at the Facility Meter are adjusted by the CAISO for any applicable Electrical Losses and Station Use to the extent such Electrical Losses and Station Use are not already reflected in the Facility Meter measurements) for four (4) hours of continuous discharge, as set forth on the Cover Sheet.

"<u>Guaranteed Commercial Operation Date</u>" means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

"<u>Guaranteed Construction Start Date</u>" means the date set forth on the Cover Sheet, as such date may be extended pursuant to <u>Exhibit B</u>.

"Guaranteed Efficiency Rate" means the minimum guaranteed Efficiency Rate of the Facility in each month of the Delivery Term, as set forth on the Cover Sheet.





"Guarantor" means, with respect to Seller, (a)

an Affiliate of Seller with an Investment Grade Credit Rating, or (c) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of

(iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) executes and delivers a Guaranty for the benefit of Buyer.

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

"Imbalance Energy" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy, as applicable, deviates from the amount of Scheduled Energy.

"Incentives" means: (a) all Tax Benefits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not any (a) Capacity Attribute, (b) Ancillary Services, or (c) Future Environmental Attributes.

"Indemnifiable Loss(es)" has the meaning set forth in Section 16.1(a).

"Indemnified Group" has the meaning set forth in Section 16.1(a).

"Indemnified Party" has the meaning set forth in Section 16.1(a).

"Indemnifying Party" has the meaning set forth in Section 16.1(a).

"<u>Initial Synchronization</u>" means the commencement of Trial Operations (as defined in the CAISO Tariff).

"<u>Installed Capacity</u>" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW_{AC} at the Facility Meter Point by the Facility Meter and adjusted for Electrical

Losses to the Delivery Point (to the extent such Electrical Losses are not already reflected in the Facility Meter measurements), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as <u>Exhibit I</u> hereto, as such capacity may be adjusted pursuant to Section 5 of <u>Exhibit B</u>, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity.

"Interconnection Agreement" means the interconnection agreement entered into by Seller or Seller's Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"<u>Interconnection Facilities</u>" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"Interconnection Point" has the meaning set forth in Exhibit A.

"Interest Rate" has the meaning set forth in Section 8.2.

"Interim Deliverability Status" has the meaning set forth in the CAISO Tariff.

"Inter-SC Trade" has the meaning set forth in the CAISO Tariff.

"Investment Grade Credit Rating" means a Credit Rating of

For avoidance of doubt, a Credit Rating from more than one credit agency is not necessary for a Party to demonstrate an Investment Grade Credit Rating.

"<u>ITC</u>" means the investment tax credit established pursuant to Section 48, 48E or other applicable provisions of the United States Internal Revenue Code of 1986, as in effect from time-to-time throughout the Delivery Term or any successor provision.

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" means that certain Joint Powers Agreement dated March 31, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"<u>kWh</u>" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"<u>Law</u>" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"Lender" means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or

refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"<u>Letter(s) of Credit</u>" means one or more irrevocable, standby letters of credit, issued by an Acceptable Issuer, in a form substantially similar to the letter of credit set forth in <u>Exhibit K</u>.

"<u>Licensed Professional Engineer</u>" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California or Nevada.

"Local Capacity Area Resources" has the meaning set forth in the CAISO Tariff.

"Local RAR" means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. "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.

"Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

"Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Capacity Attributes and Incentives.

"Major Project Development Milestone" has the meaning set forth in in Exhibit B.

"Master File" has the meaning set forth in the CAISO Tariff.

"Maximum Charging Capacity" means the highest level at which the Facility may be charged, expressed in MW_{AC} and as set forth in Exhibit Q.

- "Maximum Discharging Capacity" means the highest level at which the Facility may be discharged, expressed in MW_{AC} and as set forth in Exhibit Q.
 - "Meter Service Agreement" has the meaning set forth in the CAISO Tariff.
- "<u>Milestones</u>" means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.
 - "Monthly Capacity Availability" has the meaning set forth in Exhibit P.
- "Monthly Capacity Payment" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.
 - "Moody's" means Moody's Investors Service, Inc., or its successor.
- "Must Offer Obligations" means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.
- "<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.
- "<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.
 - "NEECH" has the meaning set forth in the definition of Affiliate.
 - "NEER" means NextEra Energy Resources, LLC.
 - "NEOP" has the meaning set forth in the definition of Affiliate.
 - "NEP" has the meaning set forth in the definition of Affiliate.
 - "NEPA" means the National Environmental Policy Act.
- "<u>NERC</u>" means the North American Electric Reliability Corporation, or any successor entity performing similar functions.
 - "Net Qualifying Capacity" or "NQC" has the meaning set forth in the CAISO Tariff.
 - "Network Upgrades" has the meaning set forth in the CAISO Tariff.



"Non-Defaulting Party" has the meaning set forth in Section 11.2.

"Notice" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (e-mail).

"Notice of Claim" has the meaning set forth in Section 16.2.

"Notification Deadline" in respect of a Showing Month shall be before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

"Operating Restrictions" means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

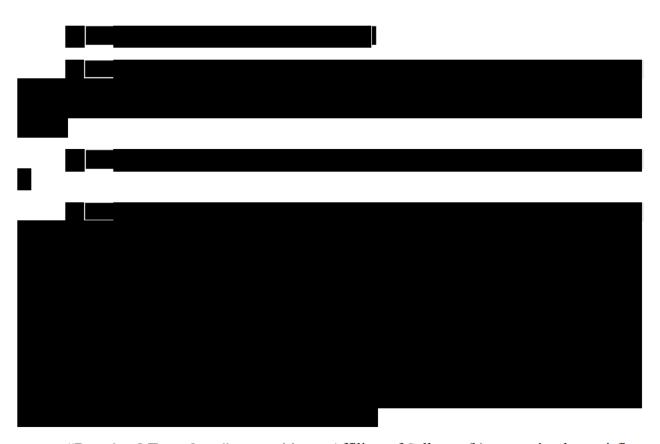
"Party" or "Parties" has the meaning set forth in the Preamble.

"Performance Guarantees" has the meaning set forth in Section 4.3(b).

"<u>Performance Security</u>" means (a) cash or (b) a Letter of Credit or (c) a Guaranty in the amount set forth on the Cover Sheet.

"Permitted Transfer" means each of the following transactions:

(a) transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided* (i)(A) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (B) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility, and (ii) if Seller is not the surviving entity, the transferee (A) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (B) meets the Seller Security requirements;



"<u>Permitted Transferee</u>" means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

- (a) A tangible net worth of not less than
 a Credit Rating of
- (b) At least two (2) years of experience in the ownership and operations of energy generation or storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility



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

"<u>Planned Outage</u>" means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.12(a).

"PMAX" means the applicable CAISO-certified maximum operating level of the Facility.

"PMIN" means the applicable CAISO-certified minimum operating level of the Facility.

"PNode" has the meaning set forth in the CAISO Tariff.

"Product" has the meaning set forth on the Cover Sheet.

"Progress Report" means a progress report including the items set forth in Exhibit E.

"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 industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (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 industry with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"Qualified Operator" means Seller or an operator of integrated battery storage facilities that has sufficient experience and technical capability to perform for Seller's benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more solar battery storage facilities, each having a nameplate capacity rating of ten (10) MW or more, for not less than two (2) years.

"Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

"RA Compliance Showing" means the (a) System RAR compliance or advisory showings (or similar or successor showings) and (b) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

"RA Deficiency Amount" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month, as calculated in accordance with Section 3.5(b).

"RA Guarantee Date" means

"RA Penalties" means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for

System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

"RA Shortfall Month" means any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which either:



"Receiving Party" has the meaning set forth in Section 18.1.

"Remedial Action Plan" has the meaning in Section 2.4.

"Replacement RA" means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits, and (b) located within the CAISO Balancing Authority Area.

"Resource Adequacy Benefits" means the rights and privileges attached to the Facility that satisfy any entity's Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

"Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"Resource Adequacy Resource" shall have the meaning used in Resource Adequacy Rulings.

"Resource Adequacy Rulings" 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, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO,

however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

"<u>RETA</u>" has the meaning set forth in Section 13.5.

"**RETA Regulations**" has the meaning set forth in Section 13.5.

"<u>S&P</u>" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

"<u>SCADA Systems</u>" means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO.

"<u>Schedule</u>" has the meaning set forth in the CAISO Tariff, and "<u>Scheduled</u>" and "<u>Scheduling</u>" have a corollary meaning.

"<u>Scheduled Energy</u>" means the Charging Energy schedule or Discharging Energy schedule, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"Security Interest" has the meaning set forth in Section 8.9.

"Seller" has the meaning set forth on the Cover Sheet.

"Seller Initiated Test" has the meaning set forth in Section 4.4(c).

"Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; provided, that the Parties agree that the value of Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

"Settlement Interval" has the meaning set forth in the CAISO Tariff.

"Settlement Period" has the meaning set forth in the CAISO Tariff.

"Shared Facilities" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Discharging Energy to the Delivery Point and delivery of Charging Energy from the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with Affiliates and /or third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

"Showing Month" shall be a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of a RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

"Site" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer's approval of such updates which approval shall not be unreasonably withheld, conditioned or delayed.

"Site Control" means that Seller, for the Contract Term starting on the Evidence of Site Control Date set forth on the Cover Sheet (or, prior to the Delivery Term, its Affiliate as of the Evidence of Site Control Date set forth on the Cover Sheet): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"<u>SP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"<u>State of Charge</u>" or "<u>SOC</u>" means the ratio of (a) the Storage Level of the Facility to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage.

"Station Use" means the Energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Facility is charging or discharging pursuant to a Seller Initiated Test, a Charging Notice or Discharging Notice. Cost responsibility for Energy that is used during a Seller Initiated Test is addressed in Section 4.5(a).

"Storage Capacity Test" or "SCT" means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, and/or Efficiency Rate or any other test conducted pursuant to Exhibit O.

"<u>Storage Capacity Interim Product</u>" means the Product (which for avoidance of doubt shall not include Resource Adequacy Benefits) produced by the Facility between the date the Facility achieves CAISO COM COD Approval and the Commercial Operation Date.

"Storage Capacity Interim Product Rate" has the meaning set forth in Section 3.7.

"Storage Level" means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"<u>Subsequent Purchaser</u>" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"Supplementary Storage Capacity Test Protocol" has the meaning set forth in Exhibit O.

"Supply Plan" has the meaning set forth in the CAISO Tariff.

"System Emergency" means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

"System RAR" means the Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority, but excluding local and flexible Resource Adequacy Requirements. "System RAR" may also be known as system area reliability, system resource adequacy, system resource adequacy procurement requirements, or system capacity requirement in other regulatory proceedings or legislative actions.

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

"<u>Tax Benefits</u>" means the PTC, ITC, RETA and any other state, local and/or federal tax benefit or incentive, including energy credits determined under Sections 38, 45, 45Y, 46,48 and 48E of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production, sale, or storage of renewable energy and/or the operation, construction, investments in or ownership of, the Facility (including any cash payment or grant).

"<u>Terminated Transaction</u>" has the meaning set forth in Section 11.2(a).

"Termination Payment" has the meaning set forth in Section 11.3.



"<u>Throughput</u>" means, for a day or Contract Year (as the context dictates), the cumulative amount of Discharging Energy from the Facility for such time period.

"Trade FME Claims" has the meaning set forth in Section 10.6.

"<u>Transmission Provider</u>" means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Charging Energy to the Delivery Point and Discharging Energy from the Delivery Point.

"<u>Transmission System</u>" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"<u>Transmission System Outage</u>" means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller's actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Discharging Energy onto the Transmission System or Seller from receiving Charging Energy from the Transmission System.



"<u>Ultimate Parent</u>" means NextEra Energy, Inc., NEER, NEP, NEOP, or NEECH, and includes any combination thereof.

"<u>Unplanned Outage</u>" means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

- 1.2 <u>Rules of Interpretation</u>. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such terms shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars;
- (k) the expression "and/or" when used as a conjunction shall connote "any or all of";
- (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
- (m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); provided, however, that subject to Buyer's obligations in Section 3.7, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for three (3) years following the termination of this Agreement.
- 2.2 <u>Conditions Precedent</u>. The Delivery Term shall not commence until Seller completes each of the following conditions and delivers to Buyer an attestation from an authorized representative of Seller that such conditions have been satisfied, which Buyer shall review and either confirm or provide notice to Seller of any deficiencies with three (3) Business Days of Seller's provision of required information; *provided*, Buyer shall be deemed to confirm such attestation of Seller if Buyer does not provide notice to Seller of any deficiencies within such three (3) Business Day period:
- (a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit H</u> and (ii) a certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit I</u> setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;
- (b) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved Full Capacity Deliverability Status or has Interim Deliverability Status for 100% of the Installed Capacity;
- (c) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;
- (d) An Interconnection Agreement between Seller or Seller's Affiliate and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;
 - (e) The Facility has obtained CAISO Certification;
- (f) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are required

to be satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

- (g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;
- (h) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages, and Commercial Operation Delay Damages.
- 2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and shall hold regularly scheduled meetings (i.e., quarterly or monthly, as applicable) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress, such meeting to be held in person or by teleconference as agreed between the Parties. The form of the Progress Report is set forth in Exhibit E and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
- 2.4 Remedial Action Plan. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones, or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a), (b) or (c), a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's reasonably detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.
- 2.5 <u>Pre-Commercial Operation Actions</u>. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and Buyer's delivery of a Dispatch Notice and nominating and scheduling the Facility for the

Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

Increase of Full Capacity Deliverability Status of Facility by Up to 5 MW to 2.6 Maximize Facility's Ability to Provide CAISO Grid Stability Benefits. The Parties seek an increase of Full Capacity Deliverability Status of the Facility by up to 5 MW (i.e., up to a total of 120 MW of Full Capacity Deliverability Status) in order to maximize the Facility's ability to provide CAISO Grid stability benefits. Seller shall use commercially reasonable efforts for at least two (2) years after the Effective Date to secure up to an additional five (5) MW of deliverability through the CAISO Transmission Plan Deliverability affidavit process for generator interconnection customers. Seller shall provide periodic updates on the progress in obtaining the additional up to five (5) MW of Full Capacity Deliverability Status for the Facility including as part of the Progress Reports; provided Seller may also provide updates outside of such Progress Reports if and when Seller receives any material updates regarding such status. If Seller is successful in obtaining additional deliverability for the Facility up to five (5) MW from the CAISO, then Seller shall provide written Notice of such additional deliverability to Buyer within fifteen (15) days thereof, and upon the date that such additional up to five (5) MW achieve commercial operation, the applicable provisions of this Agreement shall be amended accordingly to reflect such increase, including without limitation in connection with "Description of Facility", "Guaranteed Capacity", and "Dedicated Interconnection Capacity" on the Cover Sheet; and the "Guaranteed Capacity", "Effective Capacity", "Maximum Average Annual Storage Level", "Maximum Storage Level (MWh)", "Maximum Charging Capacity (MW)", "Maximum Discharging Capacity (MW)", Maximum Daily Throughput (MWh)", and "Maximum Annual Throughput (MWh)" on Exhibit Q, and the Parties shall make any appropriate changes to the Agreement to address the timing of the installation of the additional five (5) MW. For avoidance of doubt, there shall be no adjustment to the Milestone schedule with respect to the one hundred fifteen (115) MW of Guaranteed Capacity solely on the basis of adding the additional five (5) MW.

If Seller is unable to secure up to an additional five (5) MW of deliverability despite using commercially reasonable efforts in accordance with this Section 2.6, then no less than three (3) months prior to the Guaranteed Commercial Operation Date, the Parties shall initiate good faith negotiations to increase the Guaranteed Capacity to one hundred twenty (120) MW on terms and conditions mutually acceptable to each of the Parties in its sole discretion, with the intent that such negotiations and any resulting amendments to this Agreement be effectuated prior to the Commercial Operation Date with no delay to the Milestone schedule with respect to the one hundred fifteen (115) MW portion. To the extent the Parties reach an agreement to increase the Guaranteed Capacity to one hundred twenty (120) MW, the Parties shall make appropriate changes to this Agreement to reflect such increase and to address the timing of the installation of the additional five (5) MW of capacity to be added to the Facility. For avoidance of doubt, there shall be no adjustment to the Milestone schedule with respect to the one hundred fifteen (115) MW of Guaranteed Capacity solely on the basis of adding the additional five (5) MW. To the extent the Parties are unable to reach an agreement to increase the Guaranteed Capacity to one hundred twenty (120) MW by no later than thirty (30) days prior to the Guaranteed Commercial Operation, Seller shall be permitted to operate that additional five (5) MW of capacity for Seller's own benefit (the "Seller Merchant Facility") and Seller shall be responsible for and entitled to all costs and revenues attributable to the Seller Merchant Facility; provided that the Seller Merchant Facility shall be the first five (5) MW of capacity that is subject to curtailment and the last five (5) MW of capacity that is subject to dispatch.

ARTICLE 3 PURCHASE AND SALE

- 3.1 <u>Product</u>. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to, and shall purchase at the Contract Price in accordance with <u>Exhibit C</u>, the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge (subject to Buyer's obligation for avoidance of doubt to provide the Charging Energy) and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.
- 3.2 <u>Discharging Energy</u>. Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 Capacity Attributes.

- (a) Prior to the Delivery Term, Seller shall request Full Capacity Deliverability Status for the Facility's Guaranteed Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.
- (b) Prior to the Delivery Term, Seller will request that the Net Qualifying Capacity of the Facility be included in the "RA Master Resource Database" in accordance with Decision 23-04-010 and shall promptly comply with all related requests for information from the CPUC in connection with Seller's request for such inclusion. Buyer shall promptly comply with all related requests for information from the CPUC in connection with Seller's request for such inclusion.
- (c) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.
- (d) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

- (e) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.
- Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity, adjusted to reflect the Effective Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services (but not black start) that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility or its operations, *provided* that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

3.5 Resource Adequacy Failure.

- (a) <u>RA Deficiency Determination</u>. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, as set forth in Section 3.5(b), and/or provide Replacement RA, as set forth in Section 3.5(c), as the sole and exclusive remedy for the Capacity Attributes that Seller failed to convey to Buyer.
- (b) <u>RA Deficiency Amount Calculation</u>. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of:
 - (i)
 - (A) the difference, expressed in kW, of the then applicable Guaranteed Net Qualifying Capacity of the Facility, minus the then applicable Net Qualifying Capacity of the Facility that may be included in Supply Plans for Buyer (excluding reductions, if any, due to Buyer's actions or inactions), which shall be deemed to be zero (0) MW if the Net Qualifying Capacity has not been established with the CPUC and CAISO by the Notification Deadline for such RA Shortfall Month, plus any Replacement RA that was able to be included in Supply Plans for the Showing Month for Buyer; and
 - (B) the difference, expressed in kW, of the then applicable Guaranteed Flexible Capacity of the Facility, minus the then applicable Effective Flexible Capacity of the Facility that may be included in Supply Plans for Buyer (excluding reductions, if any, due to Buyer's actions or inactions), which shall be deemed to be zero (0) MW if the Effective Flexible Capacity has not been established with the CPUC and CAISO by the Notification Deadline for such RA Shortfall Month, plus any Effective Flexible Capacity that was provided as Replacement RA that was able to be included in Supply Plans in the Showing Month for Buyer;

(ii) multiplied by

- (c) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity and/or Guaranteed Flexible Capacity, as applicable, of the Facility with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity and/or Effective Flexible Capacity, as applicable, of the Facility with respect to such Showing Month; *provided*, any Replacement RA shall be communicated by Seller to Buyer in a Notice substantially in the form of <u>Exhibit M</u> at least sixty (60) days before the RA Shortfall Month.
- Buyer's Re-Sale of Product. After Seller's sale of the Product to Buyer, Buyer 3.6 shall have the exclusive right in its sole discretion to convey, use, market, or re-sell the Product, or any part of the Product, to any Subsequent Purchaser; provided that any such conveyance, use, marketing, or re-sale must not increase or modify Seller's obligations hereunder other than as set forth in this Section 3.6; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. For any such a resale of Resource Adequacy, the Supply Plan of Buyer as used herein will refer to the Supply Plan of Subsequent Buyer. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product consistent with Seller's obligations under this Agreement and in the same manner as Buyer's rights under this Agreement, but without increasing Seller's obligations or liabilities under this Agreement if Buyer had not resold any such Product. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6. Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product. Seller's obligations shall only be to Buyer in accordance with the terms of this Agreement, and Seller shall not owe any obligation or liability to any Subsequent Purchaser, other than obligations set forth in this Section 3.6 which shall be owed exclusively to Buyer. Buyer shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than ten (10) Business Days before the Compliance Showing deadline for each Showing Month for which Buyer has resold the Product. Notwithstanding anything to the contrary in this Section 3.6 or elsewhere in this Agreement, no such re-sale shall relieve Buyer of any obligations under this Agreement.
- 3.7 <u>Storage Capacity Interim Product</u>. No less than fourteen (14) days prior to the first day on which Storage Capacity Interim Product is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Storage Capacity Interim Product. If and to the extent the Facility generates Storage Capacity Interim Product, Seller shall sell and Buyer shall purchase from Seller all Storage Capacity Interim Product on an as-available basis. As compensation for such Storage Capacity Interim Product, the payment by Buyer to Seller shall be (the "<u>Storage Capacity Interim Product Rate</u>").

For the avoidance of doubt, the provision of Storage Capacity Interim Product shall not impact the

Delivery Term, meaning the provision of Storage Capacity Interim Product is provided prior to the commencement of the Delivery Term as a separate and distinct product.

3.8 <u>Compliance Expenditure Cap</u>. If a Change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.1 - 3.5, then the Parties agree that the maximum aggregate amount of costs and expenses ("<u>Compliance Costs</u>") Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped

("Compliance Expenditure

Cap").

- (a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."
- (b) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated Compliance Costs. Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "<u>Accepted Compliance Costs</u>"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.
- (c) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.
- (d) If Buyer does not respond to a Notice given by Seller under this Section 3.8 within sixty (60) days, or if Buyer does not timely pay the costs and expenses in excess of the Accepted Compliance Costs, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability or obligation under this Agreement for any failure to take, such Compliance Actions.
- (e) If a Change in Law prevents Seller from complying with its obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, or 3.7, and it is not possible to overcome the Change in Law through Compliance Actions or the expenditure of money, then, except as otherwise provided or contemplated in this Agreement with respect to how a Change in Law will be addressed, including without limitation with respect to the Guaranteed

Flexible Capacity and the Guaranteed Net Qualifying Capacity, Seller shall provide Notice to Buyer of such Change in Law and the consequences for Seller's performance hereunder, the Parties shall enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered consistent with such Change in Law, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, *provided* that if no such agreement is achieved resolution shall be determined in accordance with Article 15.

3.9 <u>Ownership of Incentives</u>. Seller shall have all right, title and interest in and to all Incentives. Buyer acknowledges that any Incentives belong to Seller. If any Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Incentives.

3.10 Future Environmental Attributes.

- (a) The Parties acknowledge and agree that as of the Effective Date, no environmental attributes are being sold under this Agreement; *however*, if, after the Effective Date the Facility is able to provide Future Environmental Attributes for any reason, including due to a change in market conditions or Law, Buyer shall have the exclusive right to such Future Environmental Attributes and there shall be no increase in the Contract Price; *provided*, *however*, that such right shall be subject to the final sentence of this Section 3.10(a) and Section 3.10(b) and Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.
- (b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.10(a), Seller agrees to work with Buyer in good faith to provide reasonably requested documentation and execute reasonable documentation necessary to effectuate the transfer and registration of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.8); *provided*, that the Parties acknowledge and agree such terms shall not alter the other material terms of this Agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 <u>Delivery</u>. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver

the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D-1.

4.2 <u>Interconnection</u>. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall maintain the Dedicated Interconnection Capacity for the Facility's sole use.

4.3 **Performance Guarantees.**

- (a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than the Guaranteed Availability, which Monthly Capacity Availability shall be calculated in accordance with <u>Exhibit P</u>.
- (b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with Exhibit O. The Guaranteed Availability and Guaranteed Efficiency Rate are collectively the "Performance Guarantees".
- (c) Buyer's sole and exclusive remedies for Seller's failure to achieve the Performance Guarantees are: (i) for the Guaranteed Availability, (A) the Availability Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C, and (B) the Seller Event of Default as set forth in Section 11.1(b)(v) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, (A) the Efficiency Rate Liquidated Damages as set forth in Exhibit C, and (B) the Seller Event of Default as set forth in Section 11.1(b)(vi) and the applicable remedies set forth in Article 11.

4.4 <u>Facility Testing</u>.

- (a) <u>Storage Capacity Tests</u>. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with <u>Exhibit O</u>. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.
- (i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.
- (ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with <u>Exhibit O</u>. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate,

as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Storage Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Storage Capacity Test.

- (b) <u>Additional Testing</u>. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).
- Operation Storage Capacity Tests shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Test, all required annual tests pursuant to Exhibit O, any Storage Capacity Test conducted if the Effective Capacity immediately prior to such Storage Capacity Test is

 of the Installed Capacity, and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a "Seller Initiated Test".
- (i) For any Seller Initiated Test other than a Storage Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices); *provided*, *however*, when these requests occur during off-peak hours, notice by Seller to Buyer is reduced to seventy-five (75) minutes and Buyer's cooperation for Seller to perform such tests shall not be unreasonably withheld.
- (ii) No Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Monthly Capacity Availability.

4.5 **Testing Costs and Revenues**.

- (a) Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Seller Initiated Test.
- (b) Buyer shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test.
- (c) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.
- (d) Except as set forth in Sections 4.5(a)-(c), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations**.

- (a) Seller shall operate the Facility in accordance with Prudent Operating Practices.
- (b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice ("<u>Automated Dispatches</u>"). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices ("<u>Alternative Dispatches</u>").
- 4.7 <u>Dispatch Notices</u>. Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO or Buyer. If Automated Dispatches are not possible for reasons beyond Buyer's control, Alternative Dispatches may be provided pursuant to Section 4.6(b).
- 4.8 <u>Facility Unavailability to Receive Dispatch Notices</u>. To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Monthly Capacity Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to any circumstances at the high-voltage side of the Delivery Point or beyond that point, including any failure of CAISO or Buyer.

4.9 Energy Management.

- (a) <u>Charging Generally</u>. Upon receipt of a Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with procuring Charging Energy.
- (b) <u>Charging Notices</u>. Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until

Buyer or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

- (c) <u>No Unauthorized Charging</u>. Seller shall not charge the Facility during the Delivery Term other than pursuant to a Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Storage Level greater than the Storage Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.
- (d) <u>Discharging Notices</u>. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.
- (e) <u>No Unauthorized Discharging</u>. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority.
- (f) <u>Unauthorized Charges and Discharges</u>. If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, Seller
- (g) <u>CAISO Dispatches</u>. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be

responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).

- (h) <u>Pre-Commercial Operation Date Period</u>. Prior to CAISO COM COD, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility.
- (i) <u>Curtailments</u>. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.
- (j) <u>Station Use</u>. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

4.10 <u>Capacity Availability Notice</u>.

- (a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("Monthly Forecast").
- (b) During the Delivery Term, no later than 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "Availability Notice"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

- (c) Seller shall notify Buyer as soon as practicable with an updated Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change by after Buyer's receipt of an Availability Notice.
- 4.11 <u>Scheduling Coordination</u>. The Parties agree to coordinate with respect to the receipt of Charging Energy and the dispatch of Discharging Energy from the Facility on a periodic basis. The Parties further agree to update Sections 4.6 to 4.10 or <u>Exhibit D-2</u> as needed by mutual written agreement.
- 4.12 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Exhibit P or the protections afforded under Section 10.2:
- <u>Facility Maintenance</u>. Subject to providing Buyer sixty (60) days' prior (a) Notice, Seller shall be permitted to limit Buyer's ability to issue Dispatch Notices for the full Effective Capacity as necessary during any period of scheduled maintenance on the Facility, provided, that (i) no notice is required for scheduled maintenance or any changes or extensions thereto which , and (ii) Seller may adjust the dates of any scheduled maintenance so long as (X) Seller makes its request more than three (3) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is acceptable to Buyer in its reasonable discretion not to be unreasonably withheld, conditioned or delayed. To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Between Seller shall not schedule non-emergency maintenance that reduces the Effective Capacity of the Facility by more than , unless (i) such outage is required to avoid an emergency or damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of (iii) such outage is required in accordance with Prudent Operating Practices, (iv) such outage is in connection with Force Majeure events, (v) such outage is required by Law, the requirements of CAISO or the interconnecting utility, and/or other applicable Governmental Authority, or (vi) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) - (a)(vi), a "Planned Outage"). Seller shall reimburse Buyer for any cost Buyer incurs in connection with any replacement Capacity Attributes, if and to the extent, required by the CAISO. Seller shall provide Buyer with information pertaining to any Planned Outage to the extent required by Buyer to comply with any CAISO requirements or applicable Law.
- (b) <u>Forced Facility Outage</u>. Seller shall be permitted to limit Buyer's ability to issue Dispatch Notices for the full Effective Capacity as necessary during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage. Seller shall provide Buyer with information pertaining to any Forced Facility Outage to the extent required by Buyer to comply with any CAISO requirements or applicable Law.
- (c) <u>System Emergencies and other Interconnection Events.</u> Seller shall be permitted to limit Buyer's ability to issue Dispatch Notices for the full Effective Capacity as necessary during any period of System Emergency or Curtailment Order pursuant to the terms of

this Agreement, the Interconnection Agreement or applicable tariff.

- (d) <u>Force Majeure Event</u>. Seller shall be permitted to limit Buyer's ability to issue Dispatch Notices for the full Effective Capacity as necessary during any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to limit Buyer's ability to issue Dispatch Notices for the full Effective Capacity as necessary to maintain health and safety pursuant to Section 6.2.

ARTICLE 5 TAXES

- 5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees) and on Charging Energy prior to its delivery to Seller. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.
- 5.2 <u>Cooperation</u>. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

- 6.1 <u>Maintenance of the Facility</u>. Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices.
- 6.2 <u>Maintenance of Health and Safety</u>. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of

damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified in Exhibit N of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity for Buyer's sole use, (ii) provide for separate metering of the Facility; provided that the Seller Merchant Facility shall be attributed its share of such meter readings in accordance with Section 2.6, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID except with respect to the Seller Merchant Facility, if any, and (iv) provide that in the event of any curtailment that is not specific to the Facility's CAISO Resource ID of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

ARTICLE 7 METERING

7.1 **Metering**.

The Facility shall have a single CAISO Resource ID. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall either (i) separately meter; or (ii) use a separate channel within the Facility Meter for, all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter will be programmed, operated and maintained pursuant to the applicable CAISOapproved SQMD Plan for the Facility, at Seller's cost, throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SOMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved Plan, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date.

Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility.

- (b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that the CAISO requires the configuration of the Facility to include as the sole meter for the Facility, the Facility Meter, and (ii) the CAISO requires the Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.
- 7.2 <u>Meter Verification</u>. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified at least seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

Invoicing. Seller shall make good faith efforts to deliver an invoice to Buyer for 8.1 Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including, to the extent the available, (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month and any other payment amounts under this Agreement, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any), and the LMP prices at the Delivery Point for each Settlement Period and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and the Contract Price applicable to such Product in accordance with Exhibit C; (b) any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Beginning on the CAISO COM COD, Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Buyer to verify the accuracy of all invoices; *provided*, *however*, the Parties acknowledge and agree that CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the prior month may not be available or be final at the time each monthly invoice is delivered pursuant to this Section 8.1 and that the monthly invoice will be based on such data as are available at the time. When CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the applicable month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) becomes available, Seller will true up such invoices to reflect any differences between Seller's records and the data received from CAISO, and an appropriate credit or charge will be added to the next monthly invoice.

- **Payment**. Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due) by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another with respect to this Agreement is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus (the "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.
- 8.3 <u>Books and Records</u>. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).
- 8.4 <u>Payment Adjustments; Billing Errors</u>. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; *provided*, *however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If

the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

- 8.5 Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.
- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other with respect to this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Acceptable Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security.

- Seller's Performance Security. To secure its obligations under this Agreement, 8.8 Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Acceptable Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable, as well as change the issuer of Letter of Credit for any such Development Security or Performance Security.
- 8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

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

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

8.10 **Financial Statements**.

- (a) From the Effective Date, Buyer shall provide to Seller unaudited monthly financial statements within ninety (90) days of end of each month and audited financial statements within one hundred twenty (120) days after the end of each fiscal year; *provided*, *however*, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with generally accepted accounting principles in the United States, consistently applied.
- (b) In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor or Guarantor's ultimate parent (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, and, if applicable, as posted on the website of the Guarantor's ultimate parent or the Securities Exchange Commission.

ARTICLE 9 NOTICES

- 9.1 <u>Addresses for the Delivery of Notices</u>. Except as provided in <u>Exhibit D-1</u>, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on <u>Exhibit N</u> or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.
- Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled next Business Day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm prevailing Pacific Time, on the next Business Day, provided that notice by electronic communication will not be deemed effective until confirmed by return electronic communication from the recipient; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other

scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

- (a) "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic ((including COVID-19) and any quarantine related to any such epidemic or pandemic); any temporary restraint or restriction imposed by applicable Law or any directive from a governmental authority; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below; or a one-time failure of the Facility's final step-up transformer so long as it is maintained by Seller in accordance with Prudent Operating Practice.
- Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event or as relates to the one-time failure of the Facility's final step-up transformer as set forth above in Section 10.1(b); or (vii) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation of the Facility following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the

avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

- 10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed, provided the suspension of performance due to a claim of Force Majeure Event shall include any reasonable time period for mobilization/re-mobilization. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii), subject to Section 4 of Exhibit B, and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.
- Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable after becoming aware of the event and that the event will have an impact on the Facility, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly unable to perform its obligations hereunder and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party;

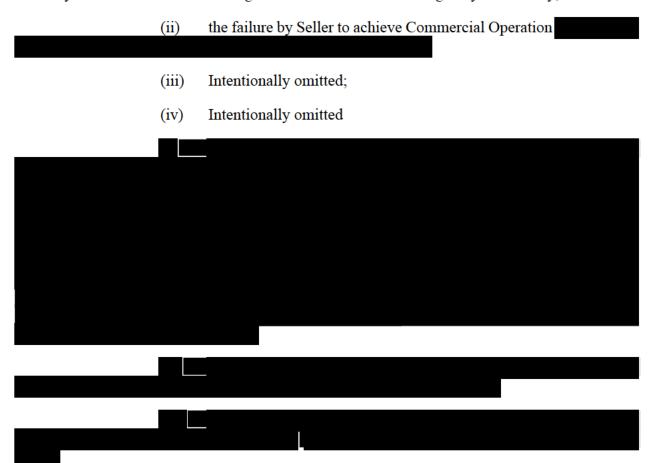


ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An "Event of Default" shall mean,

- (a) with respect to a Party (the "<u>Defaulting Party</u>") that is subject to the Event of Default the occurrence of any of the following:
- (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;
- (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);
- (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures to achieve the Performance Guarantees that do not trigger the provisions of Section 11.1(b)(v) or (vi), the exclusive remedies for which are set forth in Section 4.3(c) and Exhibit C; and except if the Facility is unable to receive or respond to Dispatch Notices, the exclusive remedy for which is set forth in Section 4.8), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);
 - (iv) such Party becomes Bankrupt;
- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party other than in compliance with other provisions of this Agreement.

- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:
- (i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not discharged by the Facility;



(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount to the extent and in accordance with this Agreement in the event Buyer draws against the Performance Security for any reason other than to satisfy a Damage Payment or a Termination Payment;

(ix) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Acceptable Issuer, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material

respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

- (B) the failure of the Guarantor to make any payment required;
- (C) the Guarantor becomes Bankrupt;
- (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
- (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
- (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or
- (x) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Acceptable Issuer, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
 - (B) the issuer of such Letter of Credit becomes Bankrupt;
 - (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
 - (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
 - (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
 - (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
 - (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in

no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

- 11.2 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") shall have the following rights:
- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) subject to the limitations in Section 11.7), or (ii) the Termination Payment, calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto, and *further provided*, promptly upon Buyer's receipt of the Damage Payment or Termination Payment, as applicable Buyer shall return to Seller the Development Security or the Performance Security to the extent either of them, as applicable, did not comprise (i.e., was not used as) the Damage Payment or the Termination Payment, as applicable.
- Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the

Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

- 11.4 <u>Notice of Payment of Damage Payment or Termination Payment</u>. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Damage Payment or Termination Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, as applicable, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, shall be determined in accordance with Article 15.
- 11.6 <u>Rights And Remedies Are Cumulative</u>. Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.



ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 <u>No Consequential Damages</u>. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST

REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE LOSS OR RECAPTURE OF ANY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 4.3(c), 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C SECTIONS (b) AND (c), AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY

WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
 - (e) The Facility is located in the State of Nevada.
- (f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.
- (g) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer's only remedy for any breach of this representation by Seller shall be that

Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of such delays. Notwithstanding the foregoing, this Section 13.1(g) shall not restrict Seller's ability to seek relief under Article 10 to the extent a Force Majeure Event occurs after the Effective Date (including, for the avoidance of doubt, any impact from the COVID-19 pandemic that otherwise satisfies the requirements for a Force Majeure Event under this Agreement).

- (h) Seller shall maintain Site Control throughout the Delivery Term.
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date, Buyer represents and warrants as follows:
- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
- (b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that

such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided*, *however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

- (f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- (g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
- 13.3 <u>General Covenants</u>. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
- (b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.
- laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. In addition, Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable Nevada law, if any ("Prevailing Wage Requirement"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement, work site, project labor agreement, collective bargaining agreement, or other similar agreement by Seller's primary EPC contractor related to construction of the Facility.
- land and that Seller may choose not to apply for a State of Nevada Renewable Energy Tax Abatement ("RETA") agreement pursuant to NRS 701A.300-.390, *inclusive*, and NAC 701A.500-660, *inclusive* (the "RETA Regulations"). Notwithstanding the prior sentence, should Seller apply for and receive a RETA agreement, and to the extent not inconsistent with the requirements of Section 13.4, Seller shall comply with the requirements of the RETA Regulations, including the requirements of having a construction workforce comprised of no less than 50% Nevada residents,

paying the construction workforce no less than 175% of the statewide average annual wage (as that phrase is defined in the RETA Regulations), and providing a health insurance plan satisfying the applicable requirements of the RETA Regulations.

ARTICLE 14 ASSIGNMENT

- 14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third-party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller. Buyer shall cooperate with Seller or any Lender or other financing party to execute or arrange for the delivery of any consents, estoppels, and other documents reasonably requested by Seller, Lender, or such other financing party, including the Collateral Assignment Agreement and Estoppel Certificate as provided in Section 14.2, to consummate any financing or refinancing, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement.
- 14.2 <u>Collateral Assignment; Financing Cooperation</u>. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon, execute, and deliver to Seller and Lender (i) a consent to collateral assignment of this Agreement in a form substantially similar to the consent to collateral assignment set forth in <u>Exhibit S</u> ("<u>Collateral Assignment Agreement</u>") and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in <u>Exhibit T</u> ("<u>Estoppel Certificate</u>").
- Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided*, Buyer's consent shall not be required if: (a) such Change of Control is, or is a result of, a direct or indirect Change of Control of NEOP or NEP; or (b) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing

(including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 <u>Governing Law</u>. 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 laws. 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.
- 15.2 <u>Venue</u>. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Santa Clara County, California.
- Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. Unless agreed to in writing by each Party, the mediation shall be concluded within the earlier of (a) sixty (60) days after the mediator is selected, and (b) ninety (90) days of the date the dispute is submitted to mediation. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 **Mutual Indemnity**.

(a) Each Party (the "<u>Indemnifying Party</u>") agrees to defend, indemnify and hold harmless, the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an "<u>Indemnified Party</u>" and collectively, the "<u>Indemnified Group</u>") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, for personal injury or death to Persons and damage

to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, "Indemnifiable Losses").

- (b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.
- 16.2 <u>Notice of Claim</u>. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("<u>Claim</u>"). The Notice is referred to as a "<u>Notice of Claim</u>". A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.
- 16.3 Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, *provided*, *further*, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.
- **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder

and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

- 16.5 <u>Subrogation of Rights</u>. Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; *provided* that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.
- 16.6 <u>Rights and Remedies are Cumulative</u>. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) <u>General Liability</u> . Seller shall maintain, or cause to be maintained at its sole
expense, (i) commercial general liability insurance, including products and completed operations
and personal injury insurance, With a minimum amount of
endorsed
to provide contractual liability in said amount, specifically covering Seller's obligations under this
Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of
inability of excess policies. Insurance may be evidenced through primary and excess policies.

- (b) Employer's Liability Insurance. Employers' Liability insurance shall be for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the apply to each employee.
- (c) <u>Workers Compensation Insurance</u>. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Nevada Law.
- (d) <u>Business Auto Insurance</u>. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of per occurrence. Such insurance shall cover liability arising out of

Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

- (e) <u>Construction All-Risk Insurance</u>. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment as arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.
- (f) <u>Pollution Legal Liability</u>. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of , naming the Seller (and Lender if any) as additional named insured. Insurance may be evidenced through primary and excess policies.
- (g) <u>Subcontractor Insurance</u>. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
- (h) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.
- (i) <u>Waiver of Subrogation</u>. Each party agrees that with respect to any losses covered by, or required to be covered by, property insurance under the terms of this agreement, other than those losses caused by the other Party's gross negligence or intentional acts, each party hereby waives and releases the other, its officers, directors, employees, and agents, from any and all claims and liability or responsibility with respect to such losses, including losses arising out of the inability to conduct business. Each party further agrees that its insurance companies shall have no right of subrogation against the other on account of this release.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 <u>Definition of Confidential Information</u>. The following constitutes "<u>Confidential Information</u>," whether oral or written which is delivered or conveyed by one Party (the "<u>Disclosing Party</u>") to the other Party (the "<u>Receiving Party</u>"): (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the

time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

Duty to Maintain Confidentiality. Upon receiving or learning of Confidential 18.2 Information, the Receiving Party will: (a) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as set forth in this Article 18; (b) restrict access to such Confidential Information to only those of its Affiliates and its and their customers, employees, officers, directors, advisors (including legal and accounting advisors), agents, contractors, subcontractors, actual and potential lenders, equity investors (including tax equity), and other financing parties (including Lenders), and actual and potential acquirors and assignees, in each case who reasonably need to know it and are bound by confidentiality provisions no less stringent than those in this Article 18; and (c) use such Confidential Information for purposes of administering this Agreement and, in cases where Seller is the Receiving Party, for the purpose of developing, financing, owning, and operating the Facility. Confidential Information will retain its character as Confidential Information but may be disclosed by the Receiving Party if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.) and that any request made thereunder may be subject to an exception from disclosure.

18.3 <u>Irreparable Injury; Remedies</u>. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available except as otherwise limited under this Agreement, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach,

without the necessity of proving actual damages.

- 18.4 <u>Disclosure to Lenders, Etc.</u>. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions no less stringent than those in this Article 18.
- 18.5 <u>Public Announcements</u>. Except as may otherwise be required by applicable Law, neither Party will, nor will it allow its affiliates, contractors and vendors to, make any public announcement, press release or statement regarding this Agreement unless the public announcement, press release or statement is approved in advance by the other Party, in its sole discretion.

ARTICLE 19 MISCELLANEOUS

- 19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- 19.2 <u>Amendments</u>. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.
- 19.3 <u>No Waiver</u>. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 19.4 <u>No Agency, Partnership, Joint Venture or Lease</u>. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement, and to the extent set forth herein, any Lender and/or Indemnified Party).

- 19.5 <u>Severability</u>. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- 19.6 <u>Mobile-Sierra</u>. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.
- 19.7 <u>Counterparts; Electronic Signatures</u>. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.
- 19.8 <u>Electronic Delivery</u>. Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.
- 19.9 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 No Recourse to Members of Buyer. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 Forward Contract; Inapplicability/Waiver of Bankruptcy Code Section 366.

(a) Each Party acknowledges, intends, and to the extent applicable agrees that (i) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and at least one of the Parties is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (ii) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Performance Security to any amounts due

and owing to such Party, constitute "settlement payments" within the meaning of the United States Bankruptcy Code; and (iii) its rights under Section 11.2 of this Agreement constitute a "contractual right to liquidate, terminate or accelerate" or offset under a forward contract within the meaning of \$8556, 561 of the Bankruptcy Code.

- (b) Each Party acknowledges and agrees that, upon a Party becoming Bankrupt, the other Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 546(e), 548(d)(2), 556, and 561 thereof.
- (c) Each Party acknowledge and agrees that, for all purposes of this Agreement, that the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor are inapplicable, or if found to be applicable each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor. In any such bankruptcy case or proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or any other provision of 11 U.S.C. § 101-1532.
- 19.12 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Signatures on following page]

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

Yellow Pine Solar III, LLC, a Delaware limited liability company	Silicon Valley Clean Energy Authority, a California joint powers authority
By: Name: Title:	By: Name: Title:

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Yellow Pine III (for clarification, the Facility will comprise only a portion of the Yellow Pine III energy complex)

Site includes all or some of the following APNs: Seller to provide at least sixty (60) days prior to the Guaranteed Construction Start Date

County: Clark County, Nevada

Latitude and Longitude:

NEPA Lead Agency: BLM

Type of Storage Facility: Electrochemical battery energy storage facility

Delivery Point: Facility PNode

Interconnection Point: The Facility shall interconnect at the PNode

Storage Facility Meter Locations: See Exhibit R

Facility PNode: To be established prior to the Commercial Operation Date. Seller shall promptly notify Buyer following establishment of the PNode.

Transmission Owner: GridLiance

Site Diagram: Preliminary Site Plan to be provided within 90 days of Effective Date and to be updated no later than 60 days prior to the Commercial Operation Date.

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

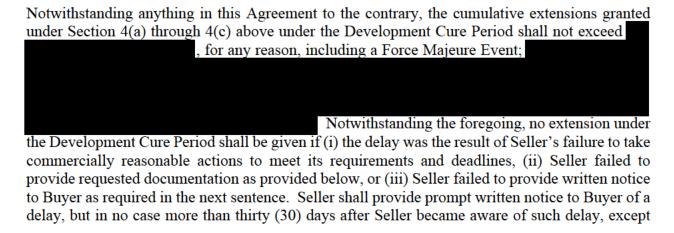
1. Major Project Development Milestones.

- a. "Construction Start" will occur upon Seller's execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the "Construction Start Date." The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable to Buyer for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility,

 On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Guaranteed Construction Start Date but shall not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1.
- 2. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of <u>Exhibit H</u> (the "<u>COD Certificate</u>"), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions precedent in Section 2.2 for achieving Commercial Operation. The "<u>Commercial Operation Date</u>" shall be the later of
- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial

Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

- 3. <u>Termination for Failure to Achieve Commercial Operation</u>. If the Facility has not achieved Commercial Operation Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
- 4. <u>Extension of the Guaranteed Dates</u>. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date both shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "<u>Development Cure Period</u>") for the duration of any and all delays arising out of the following circumstances:
 - a. a Force Majeure Event occurs; or
- b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by at least four (4) months prior to the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or
- c. Seller has not acquired by the Guaranteed Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility, including for avoidance of doubt any Interconnection Facilities or Shared Facilities, and to permit Seller and the Facility to make available and sell Product; or
- d. Buyer has not made all necessary arrangements to receive the Discharging Energy at the Delivery Point by the Guaranteed Commercial Operation Date.



that in the case of a delay occurring within sixty (60) days of the expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "Capacity Damages" to Buyer, in an amount equal to the product of (i) and (ii) each MW (or portion thereof) that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

COMPENSATION
(a) Monthly Compensation. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity and/or Efficiency Rate are applicable.
(b) <u>Availability Adjustment</u> . The " <u>Availability Adjustment</u> " (or " <u>AA</u> ") is calculated as follows:
(c) Efficiency Rate Liquidated Damages.

(d) <u>Tax Benefits</u>. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Benefits, or if any Tax Benefits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Benefits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Benefits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) is eligible for, or receives, Tax Benefits during the Contract Term.

EXHIBIT D-1

SCHEDULING COORDINATOR RESPONSIBILITIES

- (a) <u>Seller as Scheduling Coordinator for the Facility</u>. Upon Initial Synchronization of the Facility to the CAISO Grid, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests (as the Facility's SC). Seller shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hourahead, fifteen-minute market, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.
- (b) <u>Notices</u>. Seller (as the Facility's SC) shall use a web-based system through which Seller shall submit to CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide Buyer access to such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.
- CAISO Costs and Revenues. Except during a Storage Capacity Test, or as otherwise set forth below, Buyer shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Seller as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility. Subject to the foregoing, Seller shall pass through to Buyer all CAISO costs and revenues associated with the Facility, which shall be reflected as a credit or debit on the monthly invoices provided to Buyer in accordance with the invoicing and payment provisions of Article 8, including the netting provisions of Section 8.6.
- (d) <u>CAISO Settlements</u>. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.
- (e) <u>Dispute Costs</u>. Seller (as the Facility's SC) may be required to dispute CAISO settlements in respect of the Facility. If Buyer has directed Seller to dispute a CAISO settlement,

Buyer agrees to pay Seller's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Buyer with respect to the Facility.

- (f) <u>Master Data File and Resource Data Template</u>. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.
- (g) <u>NERC Reliability Standards</u>. Seller (as Scheduling Coordinator) shall comply with NERC reliability standards.

EXHIBIT D-2 BUYER AND SELLER OPERATING COORDINATION

The Parties shall work together after the Effective Date to develop this Exhibit D-2. No later than ninety (90) days prior to the Commercial Operation Date, representatives of Buyer and Seller shall finalize this Exhibit D-2. This Exhibit D-2 may be reviewed annually (date and time to be mutually agreed) to optimize operations for both Parties. The Parties shall cooperate to integrate the systems and controls necessary to implement this Exhibit D-2.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

- 1. Executive Summary.
- 2. Facility description.
- 3. Site plan of the Facility.
- 4. Description of any material planned changes to the Facility or the Site.
- 5. Gantt chart schedule showing progress on achieving each of the Milestones.
- 6. Summary of activities during the previous calendar quarter or month, as applicable.
- 7. Forecast of activities scheduled for the current calendar quarter or month as applicable.
- 8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 9. List of issues that are likely to potentially affect Seller's Milestones.
- 10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
- 11. If applicable, prevailing wage reports as required by Law.
- 12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 15. Status of Seller's efforts to secure up to an additional five (5) MW of deliverability for the Facility through the CAISO Transmission Plan Deliverability Affidavit process for generation interconnection customers.
- 16. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert a	dditiona	l rows fo	or each	day in th	ne montl	h]																		
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

0% Avail	lable No Restriction	~.	
		s:	
Hour Ending	Available Capacity	Со	mments (including available Ancillary Services)
	(MW)		
1:00			
2:00			
3:00			
4:00			
5:00			
6:00			
7:00			
8:00			
9:00			
10:00			
11:00			
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18:00			
19:00			
20:00			
21:00			
22:00			
23:00			
0:00			

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by[licensed professional engineer] ("Engineer") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Energy Storage Services Agreement dated ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.
As of[DATE], Engineer hereby certifies and represents to Buyer the following:
1. The Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority Area.
3. The Facility's Installed Capacity is no less than Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
4. The Facility has successfully completed all testing required for the commencement of Commercial Operation, including the Commercial Operation Storage Capacity Test in accordance with Exhibit O, and any tests required under applicable permits and approvals to operate the Facility.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on [DATE].
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on[DATE]
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on[DATE]
8. Seller has either (i) separately metered; or (ii) used a separate channel within the Facility Meter to meter all Station Use when the Facility is idle (i.e., the Facility is not charging or discharging).
[Signature on next page]

EXECUT	TED by [LICENSED P	ROFESSIONAL	ENGINEER]
this	day of	, 20	
			[LICENSED PROFESSIONAL ENGINEER]
			By:
			Its:
			Date:

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification ("Certification") of Storage (Capacity Test results is delivered by [licensed
professional engineer] ("Engineer") to Silicon Va	alley Clean Energy Authority, a California joint
powers authority ("Buyer") in accordance with the	he terms of that certain Energy Storage Service
Agreement dated ("Agreement") by	and between [SELLER ENTITY] and Buyer. All
capitalized terms used in this Certification but	
respective meanings assigned to such terms in the	Agreement.
I hereby certify that a Storage Capacity Test conc Capacity of $_$ MW _{AC} ("Installed Capacity")(ii) and Section 4.4 and $\underline{Exhibit\ O}$.	
EXECUTED by [LICENSED PROFESSIONAL]	ENGINEER]
this, 20	•
	[LICENSED PROFESSIONAL ENGINEER]
	By:
	Its:
	Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [SELLER ENTITY] ("Seller") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Energy Storage Service Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Calley banchy contified and represents to Duyer the following

Selle	r hereby certifies	s and represents to Buyer the follo	wing:	
(1)		Start (as defined in <u>Exhibit B</u> of the proceed that Seller issued to its co;	· ·	
(2)	the Construction	on Start Date occurred on	(the " <u>Construction</u>	n Start Date");
(3)	the precise Sit	e on which the Facility is located in previously	is, which must be within the identified	e boundaries of Site:
	`	ion shall amend the description of REOF, the undersigned has execut		,
[SEL	LER ENTITY]			
By: Its:				
Date:				

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

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

Beneficiary:

Silicon Valley Clean Energy Authority Attn: Girish Balachandran, CEO 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087

Ladies and Gentlemen:

By the order of _____ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of Silicon Valley Clean Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Energy Storage Service Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as <u>Exhibit A</u>, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXXX-XXXX]] confirmed by [e-mail to [bank email address]] Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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

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

[Bank Name]	
[Insert officer name]	
[Insert officer title]	
(DRAW REQUEST SHOULD B	E ON BENEFICIARY'S LETTERHEAD)

Exhibit A

Drawing Certificate
[Insert Bank Name and Address]
The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of (the "Applicant"), hereby certifies to the Bank as follows:
1. Applicant and Beneficiary are party to that certain Energy Storage Service Agreement dated as of, 20 (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.
OR
Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.
3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.
You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority by wire transfer in immediately available funds to the following account:
[Specify account information]
Silicon Valley Clean Energy Authority
Name and Title of Authorized Representative
Date

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this " <u>Guaranty</u> ") is entered into as of [] (the " <u>Effective Date</u> ") by and between [], a [] (" <u>Guarantor</u> "), and Silicon Valley Clean Energy Authority, a California joint powers authority (together with its successors and permitted assigns, " <u>Buver</u> ").
A. Buyer and [SELLER ENTITY], a ("Seller"), entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the "ESSA") dated as of [], 20
B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the ESSA, as required by Section 8.8 of the ESSA.
C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESSA.
D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.
<u>Agreement</u>
1. <u>Guaranty.</u> For value received and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA (the " <u>Obligations</u> "), including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA; <i>provided</i> , that the Guarantor's aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed Dollars (\$) (the " <u>Guaranteed Amount</u> "). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.

2. <u>Demand Notice</u>. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESSA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may

make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

- 3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA, or (z) the anniversary of the Effective Date. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:
 - (i) the extension of time for the payment of any Guaranteed Amount, or
 - (ii) any amendment, modification or other alteration of the ESSA, or
 - (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

<u>provided</u> that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer.

- 4. <u>Waivers by Guarantor</u>. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESSA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:
- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESSA;
- (iii) subject to Paragraph 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.
- 5. <u>Subrogation</u>. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and

Exchange Commission by Guarantor's parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, materially adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. <u>Notices</u>. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at	[] Attn: []
If delivered to Guarantor, to it at	[] Attn: []

- 8. <u>Governing Law and Forum Selection</u>. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Santa Clara, California.
- 9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force

and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. Waiver of Jury Trial. BUYER (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:
[]
By:
Printed Name:
Title:
BUYER:
[]
_
By:
Drintad Nama:
Printed Name:
Title:
By:
Printed Name:
Title:

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "Notice") is delivered by [SELLER ENTITY] ("Seller") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buver") in accordance with the terms of that certain Energy Storage Service Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		9
April		
May		
June		
July		
August		
September		
October		
November		5-
December		

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]	
By:	
By: Its:	
Date:	

EXHIBIT N

NOTICES

Yellow Pine Solar III, LLC ("Seller")	Silicon Valley Clean Energy Authority ("Buyer")
All Notices: Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: Email: DL-NEXTERA-WEST- INTERNATIONAL- REGION@nexteraenergy.com and Email: NEER-General- Counsel@nexteraenergy.com	All Notices: Street: 333 W. El Camino Real, Suite 330 City: Sunnyvale, California 94087 Attn: Girish Balachandran, CEO Phone: (408) 721-5301 Email: girish@svcleanenergy.org
Reference Numbers: Duns: [To be provided separately] Federal Tax ID Number: [To be provided separately] Invoices: Attn: Business Management Phone: E-mail: NEER-REVENUE- TEAM.SharedMailbox@nexteraenergy.com and DL-NEXTERA-WEST-INTERNATIONAL- REGION@nexteraenergy.com	Reference Numbers: Duns: Federal Tax ID Number: Invoices: Attn: Power Supply Group Phone: (408) 721-5301 Email: SVCEinvoices@svcleanenergy.org

Yellow Pine Solar III, LLC ("Seller")	Silicon Valley Clean Energy Authority ("Buyer")
Email: dl-nepm-dayaheaddesk-wecc@nexteraenergy.com and nepm.realtimedesk@nexteraenergy.com	Scheduling: Attn: ZGlobal Phone: (916) 221-4327 Email: eric@zglobal.biz
Confirmations: Attn: Confirmation Email: DL-Confirmations-Juno- PMI@nexteraenergy.com	Confirmations: Attn: Monica Padilla, Director of Power Resources Phone: (408) 721-5301 x1009 Email: monica.padilla@svcleanenergy.org
Payments: Attn: Business Management Phone: E-mail: DL-NEXTERA-WEST- INTERNATIONAL- REGION@nexteraenergy.com Wire Transfer: [Seller shall provide to Buyer	Payments: Attn: Finance Group Phone: (408) 721-5301 Email: SVCEinvoices@svcleanenergy.org Wire Transfer:
the information below at least 60 days prior to the Commercial Operation Date.] BNK: ABA: ACCT:	BNK: ABA: ACCT:

Yellow Pine Solar III, LLC Silicon Valley Clean Energy Authority ("Seller") ("Buyer") Defaults: With additional Notices of an Event of Default to: Hall Energy Law PC Yellow Pine Solar III. LLC Attn: Stephen Hall 700 Universe Blvd. Phone: (503) 313-0755 Juno Beach, FL 33408 Email: steve@hallenergylaw.com DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com With a simultaneous copy provided to: Attn: General Counsel E-mail: NEER-General-Counsel@nexteraenergy.com and **Emergency Contact: Emergency Contact:** Attn: Monica Padilla, Director of Power Resources Street: 700 Universe Blvd. Phone: (408) 721-5301 x1009 City: Juno Beach, FL 33408 Email: monica.padilla@svcleanenergy.org Attn: Business Management Phone: Email: FPDC-Wind.SharedMailbox@nexteraenergy.com and DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Storage Capacity Test Notice and Frequency

- A. <u>Commercial Operation Storage Capacity Test(s)</u>. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Section 5 of <u>Exhibit B</u>) shall be performed in accordance with this <u>Exhibit O</u> and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Storage Capacity Test(s).
- B. <u>Subsequent Storage Capacity Tests</u>. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, for each Storage Capacity Test after the Commercial Operation Storage Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

- A. Each Storage Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. <u>Conditions Prior to Testing.</u>

- (1) <u>EMS Functionality</u>. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) <u>Communications</u>. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) <u>Commissioning Checklist</u>. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Storage Capacity Test shall be based on the Effective Capacity without taking into account any capacity that exceeds the Installed Capacity.

- A. <u>Test Elements</u>. Each SCT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this <u>Exhibit O</u>, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.
 - (1) Electrical output at maximum discharging level at the Facility Meter (MW) for four (4) continuous hours; and
 - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.
- B. <u>Parameters</u>. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - (1) Time;

- (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);
- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
- (4) Storage Level (MWh).
- C. <u>Site Conditions</u>. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
 - (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg); and
 - (3) Ambient air temperature (°F).
- D. <u>Test Showing</u>. Each SCT shall record and report the following datapoints:
 - (1) That the SCT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for five (5) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the SCT for purposes of calculating the ramp rate (with the parties acknowledging that this value may be effectively instantaneous and unmeasurable with precision);
 - (5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the SCT (for purposes of calculating the ramp rate);
 - (6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

(1) <u>General</u>. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.

- (2) <u>Abnormal Conditions</u>. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
- (3) <u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. <u>Incomplete Test.</u> If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- G. <u>Test Report</u>. Within five (5) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
 - (1) A record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor. If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. <u>Supplementary Storage Capacity Test Protocol</u>. No later than sixty (60) days prior to, the initial Commercial Operation Storage Capacity Test Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this <u>Exhibit O</u> with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("<u>Supplementary Storage Capacity Test Protocol</u>"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Storage Capacity Test

Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- I. <u>Adjustment to Effective Capacity and Efficiency Rate</u>. The Effective Capacity and Efficiency Rate shall be updated as follows:
 - (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the time period comprised of (x) the first four (4) hours of discharge, plus (y) the time required for ramping the Facility from 0 MW_{AC} to the maximum discharging level as limited by CAISO (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours shall be divided by four (4) hours to determine the Effective Capacity, which shall be expressed in MW_{AC}, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.
 - (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Liquidated Damages in Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

• Procedure:

- (1) System Starting State: The Facility shall be balanced using original equipment manufacturer procedures as appropriate and will be in the online state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.

- (6) Following one (1) hour rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Effective Capacity. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Effective Capacity.
- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.
- (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

• Test Results:

- (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy as recorded pursuant to Part III.A.8 at the Facility Meter divided by four (4) hours.
- (2) The quotient of (x) the total amount of Discharging Energy (as reported under Section III.A(10) above), divided by (y) the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Liquidated Damages in Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 30 seconds.
- System starting state: The Facility will be in the on-line state at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

• Procedure:

- (1) Record the Facility active power level at the Facility Meter.
- (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
- (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within ...
- System starting state: The Facility will be in the on-line state at an an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.

• Procedure:

- (1) Record the Facility active power level at the Facility Meter.
- (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at power factor for
- (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at and an an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

• Procedure:

- (1) Record the Facility reactive power level at the Facility Meter.
- (2) Command the Facility to follow 30 MW for ten (10) minutes.

- (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.

• Procedure:

- (1) Record the Facility reactive power level at the Facility Meter.
- (2) Command the Facility to follow 30 MW for ten (10) minutes.
- (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

Monthly Capacity Availability Calculation. Seller shall calculate the "Monthly Capacity Availability" for a given month of the Delivery Term using the formula set forth below:

Monthly Capacity Availability (%) =

[AVAILHRS_m + EXCUSEDHRS_m]

[MONTHRS_m]

Where:

m = relevant month "m" in which Monthly Capacity Availability is calculated;

MONTHRS_m is the total number of hours for the month;

AVAILHRS_m is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services (provided that notwithstanding anything to the contrary set forth above in this Exhibit P or elsewhere in this Agreement, to the extent the Facility is unable to provide Ancillary Services for any reason not excused under this Agreement during any Settlement Interval or Settlement Period that is not otherwise deemed EXCUSEDHRS_m, but the Facility is available to charge and discharge Energy between the Facility and the Delivery Point, then such impact on AVAILHRS_m shall be reduced by at the Delivery Point (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond that may limit Seller's delivery of Product). If the Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Capacity, the AVAILHRS_m for such time period shall be calculated by multiplying such AVAILHRS_m by a percentage determined by dividing (a) by (b); where (a) is the Effective Capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (b) is the Effective Capacity.

EXCUSEDHRS_m is the total number of hours, or partial hours, in the month that are not included as AVAILHRS_m due to Approved Maintenance Hours, Storage Capacity Tests, Curtailment Orders, Force Majeure Events, System Emergencies, Operating Restrictions in Exhibit Q, Buyer breach or default, or any circumstances at the high-voltage side of the Delivery Point or beyond that point that may limit Seller's delivery of Product (each, an "Excused Event"). If an Excused Event results in less than the full amount of the Effective Capacity for the Facility being unavailable during any applicable hour, or partial hour, the EXCUSEDHRS_m for such time period shall be calculated by multiplying such EXCUSEDHRS_m by a percentage determined by dividing (a) by (b); where (a) is the Effective Capacity amount that is reported as unavailable by Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (b) is the Effective Capacity. For avoidance of doubt, the total of AVAILHRS_m plus EXCUSEDHRS_m for any hour, or partial hour, shall never exceed 1.

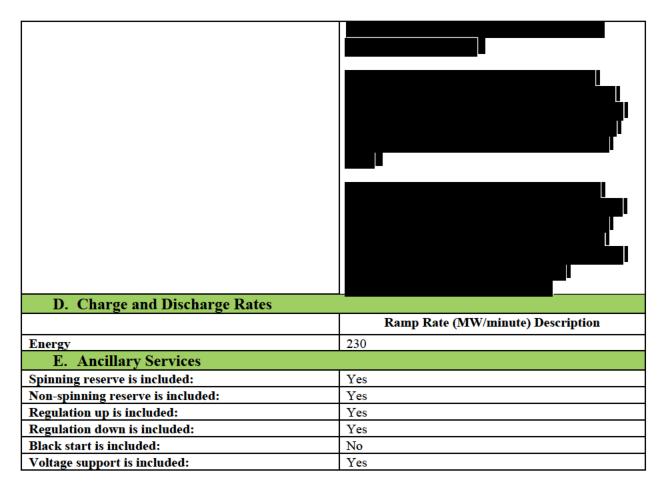
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will finalize the Operating Restrictions prior to the Commercial Operation Date; provided, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

File Update Date:			
Technology:	Lithium Ion Batteries		
Storage Unit Name:	Lithing 100 Dattelles		
A. Contract Capacity			
		116	
Guaranteed Capacity (MW):		115	
Effective Capacity (MW):		115 as determined by Storage Capacity Test	
B. Total Unit Dispate	hable Kange Inform	ation	
Maximum Average Annual Sto	rage Level		
Maximum Storage Level (MW	h):	460	
Minimum Storage Level (MWI		0	
Maximum Charging Capacity	(MW):	115	
Maximum Discharging Capaci		115	
C. Maximum Throug	hput		
Maximum Daily Throughput (MWh):	920 (2.0 cycles)	
Maximum Annual Throughput	t (MWh):		

Exhibit Q - 1



I. Data Points to Be Sent from Seller to Buyer Via a Mutually Agreeable Form

The following data points will be transmitted via a mutually agreeable form from Seller to Buyer and represent energy storage level data:

Table 1

Energy Storage			
<u>Description</u>	<u>Units</u>		
Real Power Set-Point (echo)	MW		
Actual Real Power	MW		
Actual Reactive Power	MVar		
Stored Energy Level	MWh		
Remaining Throughput (Contract Year)	MWh		
YTD average Stored Energy Level (Contract Year)	MWh/day		

Maximum Allowable Stored Energy Level	MWh
Additional Data Points Reserved for Future Use	

The following data points will be transmitted via a mutually agreeable form from Buyer to Seller and represent energy storage level data:

Table 2

Energy Storage	
<u>Description</u>	<u>Units</u>
Charge Power Set-Point*	MW
Discharge Power Set-Point*	MW
Duration of Charge/Discharge Set-Point*	minutes
Target Stored Energy Level*	%
Ramp Rate	MW/s
Control Mode (target time or target SOC)	Boolean
Additional Data Points Reserved for Future Use	

^{*} Parties will resolve any conflicts in priority of signal in the Operating Restrictions.

Data points transmitted via a mutually agreeable form from Seller to Buyer are subject to Operating Restrictions.

- 1. Response times of Storage Facility. The Operating Restrictions will include protocols that outline the expectations for responding to Buyer's set points.
- 2. Backup Communications. In the event of a communications failure, Buyer and Seller shall communicate via telephone in order to correct the failure.

EXHIBIT R

METERING DIAGRAM

Preliminary Metering Diagram set forth on the following page. A final version of the Metering Diagram will be provided to Buyer at least thirty (30) days before the Commercial Operation Date, which will replace the attached version for purposes of this Agreement



EXHIBIT S

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT AND AGREEMENT ([NAME OF CONTRACTING PARTY]) ([NAME OF ASSIGNED AGREEMENT])

This COLLATERAL ASSIGNMENT AGREEMENT (this "Consent"), dated as
of, 20[], is executed by and among [NAME OF CONTRACTING PARTY], a
[legal form of Contracting Party] organized under the laws of the State of [] (the
"Contracting Party"), [], a [] (the "Project Owner"), and
[], as collateral agent (in such capacity, together with its successors and permitted
assigns, the "Collateral Agent") for various financial institutions named from time to time as
Lenders under the Credit Agreement (as defined below) and any other parties (or any of their
agents) who hold any other secured indebtedness permitted to be incurred under the Credit
Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").
A. The Project Owner owns, operates and maintains []
(the "Project").
B. The Contracting Party and the Project Owner have entered into the
agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise
modified from time to time in accordance with the terms thereof and hereof, the "Assigned
Agreement").
C. The Borrower, the Project Owner, the other affiliates of the Borrower as
Guarantors, various financial institutions named therein from time to time as
Lenders,[] , as the Administrative Agent and Collateral Agent, have entered
into a Credit Agreement, dated as of [](as amended, modified or supplemented
from time to time, the "Credit Agreement"), providing for the extension of the credit facilities
described therein.
D. As security for the payment and performance by the Project Owner of its
obligations under the Credit Agreement and the other Financing Documents (as defined below)
and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its
right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement
to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of
between the Project Owner and the Collateral Agent (as amended,
restated, supplemented or otherwise modified from time to time in accordance with the terms
thereof, the "Security Agreement", and, together with the Credit Agreement and any other
financing documents relating to the issuance of the Notes, the "Financing Documents").
E. It is a requirement under the Credit Agreement that the Project Owner cause
the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

- 1. <u>Consent to Assignment</u>. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.
- 2. <u>Representations and Warranties</u>. The Contracting Party represents and warrants as follows:
- (a) <u>No Amendments</u>. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.
- (b) <u>No Previous Assignments</u>. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.
- (c) <u>No Termination Event: No Disputes.</u> After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a "<u>Termination Event</u>") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. RIGHT TO CURE.

- (a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an Event of Default by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.
 - (b) The Contracting Party agrees that it will not (i) terminate the Assigned

Agreement [(other than pursuant to Section [__] of the Assigned Agreement)]1or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, which consent shall not be unreasonably withheld, delayed or conditioned, except to the extent the Contracting Party may subcontract such obligations to other parties.

If a Termination Event shall occur [(other than a termination pursuant to Section [] of the Assigned Agreement)]2, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. Collateral Agent will have the right, but not the obligation, to cure an Termination Event on behalf of Project Owner, only if Collateral Agent sends a written notice to Contracting Party before the later of (i) the expiration of any cure period under this Agreement, and (ii) fifteen (15) Business Days after Collateral Agent's receipt of notice of such Termination Event from Contracting Party, indicating Collateral Agent's intention to cure. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent shall have a period of ninety (90) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event (or such longer additional period if the Collateral Agent is unable to cure such Termination Event within such initial ninety (90) day period despite exercising commercially reasonable efforts); provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition; provided, further, that in the event of items (i) or (ii) above, such time period shall not exceed one hundred eighty (180) days. Any cure period for the Collateral Agent shall not commence until the later of (i) the end of the cure period of the Project Owner under the Assigned Agreement and (ii) written notice from the Contracting Party to the Collateral Agent of a

Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Termination Event.

- (d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.
- (e) Following a Termination Event by the Project Entity under the Assigned Agreement, the Contracting Party may require the Collateral Agent, if the Collateral Agent has provided the notice set forth in subsection (c) above, to provide to Contracting Party a report concerning:
 - (i) The status of efforts by Collateral Agent to develop a plan to cure the Termination Event;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (iv) Any other information which Contracting Party may reasonably require related to the development, implementation and timetable of the cure plan.

Collateral Agent must provide the report to Contracting Party within twenty (20) Business Days after Notice from Contracting Party requesting the report. Contracting Party will have no further right to require the report with respect to a particular Termination Event after that Termination Event has been cured.

REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT (I) THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT'S REQUEST, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT, OR (II) IF THE COLLATERAL AGENT OR ITS DESIGNEE, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE) AFTER ANY SUCH REJECTION OR TERMINATION OF THE ASSIGNED AGREEMENT, PROMPTLY AFTER THE CONTRACTING PARTY'S WRITTEN REQUEST, THE COLLATERAL AGENT MUST ITSELF OR MUST CAUSE ITS DESIGNEE TO PROMPTLY ENTER INTO A NEW AGREEMENT WITH THE CONTRACTING PARTY HAVING SUBSTANTIALLY THE SAME TERMS AS THE ASSIGNED AGREEMENT FOR THE REMAINING TERM THEREOF, <u>PROVIDED</u> THAT IN THE EVENT A DESIGNEE OF THE COLLATERAL AGENT, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE), SUCH DESIGNEE SHALL BE APPROVED BY THE CONTRACTING PARTY, NOT TO BE UNREASONABLY WITHHELD.

- 5. SUBSTITUTE OWNER. THE CONTRACTING **PARTY** ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS, THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT. SUCH SALE OR TRANSFER MAY BE MADE ONLY TO AN ENTITY THAT (I) MEETS THE DEFINITION OF "PERMITTED TRANSFEREE" AS DEFINED IN THE ASSIGNED AGREEMENT AND (II) IS AN ENTITY THAT THE CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS THE "CUSTOMER" UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT'S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER SOLELY TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT.
- 6. <u>PAYMENTS</u>. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING PARTY'S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.

- NO AMENDMENTS. THE CONTRACTING ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT. OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED, AMEND OR MODIFY THE ASSIGNED AGREEMENT IN ANY MATERIAL RESPECT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO A MATERIAL PROVISION OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE BORROWER OR PROJECT OWNER (AS APPLICABLE UNDER THE FINANCING DOCUMENTS) A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER, OR CONSENT IS BEING MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE BORROWER OR THE PROJECT OWNER (AS APPLICABLE UNDER THE FINANCING DOCUMENTS) TO HAVE OBTAINED THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, LENDERS, OR OTHER PARTIES THERETO.
- 8. <u>ADDITIONAL PROVISIONS</u>. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]
- NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A) THE DATE OF PERSONAL DELIVERY, (B) POSTAGE PREPAID, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HEREWITH), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY, OR (C) IF TRANSMITTED BY FACSIMILE, THE DATE WHEN SENT AND FACSIMILE IS CONFIRMATION **RECEIVED: PROVIDED** THAT ANY COMMUNICATION SHALL BE FOLLOWED PROMPTLY BY A HARD COPY **ORIGINAL THEREOF BY EXPRESS COURIER:**

The Collateral Agent:	[]
]_
	Attn: [J
	Telephone No.: [
	Facsimile No.: [
The Project Owner:		

The Contracting Party:		
10. <u>SUCCESSORS</u> BINDING UPON AND SHALL INUI	AND ASSIGNS. THIS CONS	
ASSIGNS OF THE CONTRACTING	G PARTY, AND SHALL INURE	TO THE BENEFIT
OF THE COLLATERAL AGENT, TOWNER AND THEIR RESPECTIVE		/

12. <u>GOVERNING LAW</u>. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF _____.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By:	
•	Name:
	Title:
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L	
as C	Collateral Agent
Dru	
By:	Name:
	Title:
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ACK	nowledged and Agreed:
г	-
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D	
By:	N
	Name:
	Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions (Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement (Section 2(c))]

EXHIBIT T

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE (Energy Storage Agreement)

Thi	s ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), dated as of, 202_, is provided by, a
	RECITALS
as of	Buyer and, a Delaware limited liability company cet Company") are parties to that certain Energy Storage Service Agreement, dated, 202_ (the "Energy Storage Agreement"), in connection with the corage project ("Storage Project").
В.	Pursuant to that certain [describe Lender financing agreement].
	Pursuant to Section [] of the [Lender financing agreement], the [Lenders] red that this Estoppel Certificate be delivered as a condition precedent to the tion of the transactions described therein.
	W, THEREFORE, in consideration of the foregoing recitals, Buyer hereby grees and acknowledges as follows:
1.	No default or event of default with respect to Buyer, nor, to the knowledge of Buyer, any other party has occurred under the Energy Storage Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Project Company or Buyer to terminate the Energy Storage Agreement.
2.	There exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Energy Storage Agreement.
3.	Each representation or warranty made or given by Buyer in Section [] of the Energy Storage is complete, true and correct.
4.	As of the date hereof, (i) the Energy Storage Agreement is in full force and effect and has not been assigned, amended, supplemented or modified, (ii) there are no pending or threatened disputes or legal proceedings between Buyer and the Project Company, (iii) there is no pending or, to the knowledge of Buyer,

- 5. threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to affect the legality, validity or enforceability of the Energy Storage Agreement, (iv) Buyer is not aware of any event, act, circumstance or condition constituting an event of force majeure under the Energy Storage Agreement, and (v) the Project Company owes no indemnity payments or other amounts to Buyer under the Energy Storage Agreement.
- 6. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.
- 7. Buyer agrees that any notices required to be delivered to Seller under Section [__] of the Energy Storage Agreement, including notices of an [Event of Default], shall be delivered by Buyer to each of the [Lenders] at their respective notice addresses set forth on Exhibit A hereto, and Buyer agrees that the [Lenders] shall have the right (but not the obligation) to cure the defaults listed in any notice of default in accordance with Section [__] of the Energy Storage Agreement within a cure period that is the same length as the cure period afforded to Seller under the Energy Storage Agreement with respect to such event (but in no event less than 90 days), and which starts on the later of (i) the same date that the Seller's cure period expires under the Energy Storage Agreement or (ii) the date that the [Lenders] receive such notice that lists the default or defaults of the Seller under the Energy Storage Agreement.
- 8. [Additional provisions to be included if necessary to clarify the Energy Storage Agreement.]
- 9. This Estoppel Certificate shall be governed by the laws of ______, without regard to principles of conflict of law.

[Signature page follows]

	be executed by the beautiful by the beau	by its un	dersigned	authorized	officer	as of the	e date	first set	forth	
By:										
	Name:									
	Title:									

IN WITNESS WHEREOF, Buyer has caused this Estoppel Certificate

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2019-12

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE NON-STANDARD PRICING AGREEMENTS FOR ELIGIBLE LARGE COMMERCIAL AND INDUSTRIAL CUSTOMERS

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

WHEREAS, commercial and industrial customers make up a substantial majority of SVCE's electric load;

WHEREAS, commercial and industrial customers are critical partners in helping SVCE and its member agencies reduce carbon emissions and meet climate action planning goals;

WHEREAS, the state of California adopted new legislation to re-open the cap for Direct Access to the wholesale markets for commercial and industrial customers under SB 237 in September 2018;

WHEREAS, in the expanded Direct Access marketplace, current SVCE commercial and industrial customers may opt out to receive DA service under more flexible or lower-cost tariff structures;

WHEREAS, SVCE seeks to provide clean, carbon-free electricity services that meet customer needs, at rates that are competitive and contribute positively to SVCE's financial position;

WHEREAS, the Direct Access marketplace is highly competitive, requiring that SVCE structure non-standard pricing agreement terms in a highly responsive, time-sensitive fashion:

WHEREAS, SVCE wishes to offer non-standard pricing agreements to retain eligible commercial and industrial accounts, under the terms of the attached 'Non-Standard Pricing Agreement Policy'

WHEREAS, in order to expedite the approval of non-standard pricing agreements consistent with Direct Access marketplace requirements, the Board wishes to delegate to the Chief Executive Officer the authority to negotiate directly with eligible commercial and industrial accounts in accordance with the Board approved Non-Standard Pricing Agreement Policy.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

<u>Section 1.</u> The Board hereby delegates authority to the Chief Executive Officer to negotiate and execute non-standard pricing agreements with eligible large commercial and industrial customers, provided that the pricing agreements meet the minimum requirements set forth in the Non-Standard Pricing Agreement Policy.

PASSED AND ADOPTED this 12th day of June 2019, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				~
City of Gilroy	Director Tovar				
City of Los Altos	Alternate Director Fligor	~			
Town of Los Altos Hills	Director Corrigan	/			
Town of Los Gatos	Director Sayoc	/			
City of Milpitas	Director Nuñez				/
City of Monte Sereno	Director Javed Ellahie	/			
City of Morgan Hill	Director Martinez Beltran	1			
City of Mountain View	Director Abe-Koga	/			
County of Santa Clara	Director Ellenberg	/			
City of Saratoga	Director Miller	/			
City of Sunnyvale	Director Smith	/			

Chair

ATTEST:

Andrea Pizano, Board Secretary

SILICON VALLEY CLEAN ENERGY AUTHORITY NON-STANDARD PRICING AGREEMENT POLICY

When offering non-standard pricing agreements to eligible customers, SVCE adheres to a defined non-standard pricing agreement policy. A non-standard pricing agreement will apply to electric generation services, and if applicable, may include consideration and valuation of supporting products or services. Under this policy, the non-standard pricing agreement must:

- 1) apply exclusively to customers with annual load in SVCE's service territory greater than 10GWh
- 2) be marginal cost-based and account for any volume and/or price risk
- be priced to allow SVCE to cover variable costs and achieve some level of contribution to fixed cost and reserve margin, in conformance with SVCE's financial objectives, Risk Management Policy and controls.
- 4) require a commitment level from the customer (e.g. volume, length of term) commensurate with the non-standard pricing agreement offered to the customer
- 5) meet SVCE's carbon-free requirements, and be consistent with SVCE's decarbonization strategy for power supply, transportation and the built environment



Staff Report - Item 4

Item 4: Provide Feedback on the FY 2023-24 Proposed Operating Budget and Updated

Reserves Policy

From: Girish Balachandran, CEO

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

Date: 8/9/2023

RECOMMENDATION

In preparation for adopting the budget in September 2023, Staff recommends that the Board of Directors provide feedback on the fiscal year (FY) 2023-24¹ Proposed Operating Budget that projects depositing \$7.7 million into the reserves and the updated Reserves Policy that increases the reserve target from 285 days of cash on hand (DCOH) to 300.

FINANCE AND ADMINISTRATION, EXECUTIVE COMMITTEE & BOARD REVIEWS

At the May 12th Finance and Administration Committee meeting, the May 26th Executive Committee meeting, and the June 14th Board of Directors meeting, staff presented the methodology, framework, and key assumptions for developing the proposed budget and responded to the Committees and Board members' questions on the approach to developing the budget.

Staff presented a preliminary budget outlook at the June 23rd Executive Committee meeting. Staff informed the Committee that the final budget numbers will be developed using July's latest energy price market data. The Committee provided feedback on the preliminary budget, including comparing SVCE's full-time staff numbers with those of the other CCAs. Staff discussed the high volatility in the energy markets and the high prices for Resource Adequacy (RA) and Renewable Portfolio Standard (RPS) products, which added additional uncertainty to budget projections. Staff discussed removing the request to transfer funds towards an SVCE building purchase if margin projections deteriorate further.

Staff presented the Proposed Operating Budget and the recommendation to increase the target DCOH level in the reserves policy to the Finance and Administration Committee on August 1, 2023. Staff explained the difficulty in modeling RA and RPS prices, their impact on SVCE's revenue forecast, and the modeling assumptions of these prices, holding other variables constant, could create conservative budget projections. The Committee unanimously supported the potential conservative approach to modeling SVCE's revenues. Although not in the proposed budget, the Committee encouraged staff to continue assessing opportunities for purchasing an SVCE office building and to return to the Committee and the Board with any attractive opportunities. The Committee unanimously recommended that the Board adopt the Proposed Operating Budget and change the reserve policy to increase the DCOH target from 285 to 300.

ANALYSIS & DISCUSSION

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¹ The fiscal year 2023-24 starts on October 1, 2023, and ends on September 30, 2024.

The FY 2023-24 Proposed Operating Budget is balanced and presents Silicon Valley Clean Energy (SVCE) in stable financial condition. The projected balance available for reserves of \$7.7 million is a decrease of \$65.7 million from the \$73.4 million presented in the FY 2022-23 Mid-Year Budget.

Energy Revenues

The Proposed budget shows a decrease in revenues of \$83.6 million compared to the FY 2022-23 adjusted mid-year budget. The revenue decrease is primarily due to a forecasted increase in 2024 PCIA² of about 318 percent (from 0.28 cents/kWh to 1.17 cents/kWh) and a drop in the 2024 PG&E generation rate of about 28 percent on average (from 14.08 cents/kWh to 11.55 cents/kWh) because of recent declines in forward energy prices. From late March to early July, the energy prices for the calendar year 2023³ are down about 18%, and the forward prices for the calendar year 2024 are down on average about 14%. Declining market prices typically result in a simultaneous increase in PCIA and a decrease in PG&E generation rates. The significant rise in PCIA combined with a drop in PG&E generation rates reduces SVCE margins on average by 27 percent for 2024.

Staff used the CalCCA's⁴ NewGen Strategies & Solutions Model to forecast PCIA and PG&E generation rates with updated market prices and an adjustment for modeling error by calibrating the model with PG&E's May ERRA⁵ forecast of 2024 rates. Staff did not update the model's forecast of RA and RPS prices. Unlike prior years, RPS prices and Resource Adequacy costs are highly volatile and at very high levels compared to those in the past, creating an additional layer of uncertainty in forecasting PCIA and PG&E generation rates.

Unlike energy prices, where there are readily available market-traded forward prices, the Resource Adequacy (RA) and Renewable Portfolio Standard (RPS) prices used in the PCIA and PG&E generation rate calculations are based on CPUC's derived market price benchmarks (MPB), which are published later in the fall of the year. It's difficult to forecast CPUC's MPB prices because CPUC calculates them using a volume-weighted average of Load Serving Entities (LSE) market transactions, which can span forward transactions entered by the LSEs during the prior two years. The NewGen Strategies & Solutions MPB prices are very low compared to the current market prices. For example, the current market price for RPS product is about \$45 MWh for the calendar year 2024, but those used in the model are about \$12.50 per MWh, and for RA, it's modeled at about \$8.50 per kW-month versus the market price of around \$12.75 per kW-month. In computing SVCE's Power Supply costs, staff computed the open RA and RPS positions cost at current market prices. Holding for other variables, this disparity in RA and RPS prices used for projecting costs versus PCIA and PG&E generation rates tends to make the budget forecast conservative. For illustrative purposes, if we used the higher RA and RPS prices in the NewGen model to estimate PCIA and PG&E generation rates, the fiscal year 2023-24 revenues would be about \$100 million higher.

PG&E's forecast of 2024 rates in the ERRA filing made in May, shows a very high PG&E Generation Rate of ~14.546 cents/kWh and a very low PCIA of negative 0.62 cents/kWh, implying an improvement in SVCE margin of about 6 percent relative to current rates. PG&E's filing, however, is based on results using market prices in late March 2023, and since then, market prices have decreased significantly, as stated earlier in the report. Based on the ERRA filing schedule, PG&E will update its rate forecast in early fall, and the CPUC is expected to approve new rates in late December.

² <u>Public Utility Code Sections 366.1</u> and <u>366.2</u> require the CPUC to make sure that customers leaving PG&E do not burden remaining PG&E customers with costs which were incurred to serve them. To ensure customer indifference, CCAs and Direct Access, or departing load customers are required to pay a power charge indifference adjustment (PCIA).

³ Calendar year 2023 calculation includes actuals for past months and forwards for future months.

⁴ CalCCA, California Community Choice Association, is the trade association of 24 CCAs in California. SVCE has been a member of CalCCA since its inception in 2017.

⁵ ERRA, the Energy Resource Recovery Account, is a balancing account utilized by PG&E to record and recover power costs associated with PG&E's authorized procurement plan. ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates.

⁶ The rates shown in this report are SVCE load-weighted average rates.

To test the accuracy of the NewGen model, staff calibrated the model to PG&E's forecast using the same period market data PG&E used in developing its 2024 rate forecast. The calibration shows that the model results in about a 5 percent higher SVCE margin. Using the methodology discussed in the budget framework discussions to account for potential modeling errors, staff reduced the resulting margins from the current model by 10 percent.

Using the NewGen model with the latest prices and an adjustment for modeling error likely better aligns revenues closer to the rates that PG&E will update in October, and it also better aligns revenues with power supply costs because both estimates are made using the same set of energy market data. Nevertheless, the results are based on a forecast, and the actual rates won't be known until the CPUC approval, expected in late December. Between now and when the rates are finalized, market prices will change, which can create less or more favorable results. Staff recommends that SVCE change its rates when the CPUC makes the new PCIA and PG&E generation rates effective. At that time, the Board can revisit the customer discount rate. The effective SVCE rate discount is modeled at 2% starting January 2024 to set the budget. The current 4 percent discount remains until the end of December 2023. The 2 percent effective discount rate is composed of a 1 percent discount relative to comparable PG&E generation rates for all customers and an <u>additional</u> 1 percent converted to dollar bill credits to the CARE & FERA customers (~30,000), which amounts to \$3.14 million or about \$8.70 per month bill credit for 12 months. The budget shows the bill credit as a separate cost item.

The proposed budget continues to reduce revenues to account for potential write-offs that could occur. SVCE is currently budgeting revenues to include a 0.75% write-off rate, which amounts to roughly \$3.3 million.

Power Supply Expenses

Power supply expenses are expected to remain close to the current fiscal year level at \$391.6 million. The drop in forward prices reduces costs but only to an extent because the portfolio for the calendar year 2024 is currently hedged at 78 percent. Additional Power Purchase Agreements (PPAs) coming online also further reduce costs. However, the favorable drivers reducing costs are offset by an increase in load of about 1.5%, as the forecast assumes full recovery from COVID impacts and much higher RPS and RA prices.

Reserves Policy Target Levels

At the June 14th, 2023, Board of Directors meeting, staff presented the results of the stress test analyses and emphasized the need to hold sufficient reserves to ensure SVCE can withstand risks such as those modeled in the analyses. The stress test modeled a collapse in energy prices that substantially reduced revenues and increased financial posting requirements to the Provider of Last Resort (PG&E). Staff has since updated the stress test scenario analysis with market and portfolio data consistent with those used to develop the proposed budget.

As shown in the table below, the new implied targets, derived using the methodology discussed in the stress test analysis, are close to the current targets. The methodology for deriving the targets is to set the target level such that if the modeled stress scenario were to occur, reserves remain above 120 days of cash on hand (DCOH) for the next two fiscal years and set the upper reserve target such that it remains above 90 DCOH over the next five fiscal years. Given the conservative assumptions used in modeling RA and RPS prices to derive the PCIA and PG&E generation rate forecasts and the 5-yr financial projection shown in attachment 2 showing ending reserves will be below target levels in the near future, staff considered keeping the existing targets.

On July 26th, Moody's Investor Service, a credit rating agency, upgraded SVCE's issuer rating from Baa2 to Baa1 with a stable outlook. Strong liquidity and adopting a more stringent reserves policy with a higher reserve target of 285 days were cited as credit-positive elements. Moody's also indicated that "Maintenance of strong liquidity position through sound financial management with days cash on hand in excess of 300 days" would be one of several factors that could lead to a rating upgrade. Given that 300 DCOH is close to the current level and supported by the current stress test analysis, staff recommends increasing the target

reserve DCOH level to 300 from 285. This change would not only continue to align the target level to the stress test analysis but would also align it with one of Moody's key criteria in assessing our credit rating.

The attached redlined Reserves Policy shows the proposed change to the reserve target level.

Reserve Targets (DCOH)	Current	New
Minimum	120	120
Goal (Target)	285	300
Maximum (Upper Target)	490	490

As presented in the June Stress Test report and presentation, the upcoming fiscal year margins are not guaranteed, given the true-up in 2025 for PCIA and PG&E generation rates. If the adverse-modeled risk conditions materialize, the reserves policy targets maintaining at least 120 DCOH, which will be needed to reshape strategy and secure additional liquidity, and the upper reserves target helps manage risks over 5 years.

Operating Expenses

Operating expenses are expected to grow in the proposed budget, increasing by \$4.8 million from the FY2022-23 adjusted midyear budget. The increase in projected operating expenses is primarily comprised of costs associated with increased staffing. In addition, the operating budget includes an overall 5% contingency, which amounts to \$1.5 million embedded in all operating expense category increases.

Overall personnel expenses are expected to increase by \$4.1 million, of which \$1.8 million, approximately 40% of the increase, is associated with the nine new positions across the organization. The remaining part of the increase is driven by filling vacancies and budgeting for salary increases.

The nine new positions reflect the increasing needs of a mature organization. These new positions focus on program design, marketing, and deployment; data analyses; data engineering to integrate various energy wholesale and portfolio operational data; supporting regulatory work; analytical and administrative work; and budgeting and financial analyses. Of the nine new positions since last fiscal year, one Associate Data Scientist position is filled, and one Senior Regulatory Analyst position is currently being recruited under the CEO's personnel authority, which allows the CEO to add positions within 10 percent of the authorized number and the approved budget. In addition to these new positions, SVCE continues to work with specialized consultants who provide critical skills to bridge gaps between full-time staff.

Of the increase in personnel costs, \$1.5 million arose from lower vacancy savings than the Mid-Year budget, which was partially based on actual vacancy rates as opposed to the 5 percent annual vacancy rate assumed in the proposed budget. SVCE continues to work to fill positions and anticipates full staffing by the end of the calendar year but utilizes a 5% long-term vacancy rate in the personnel budget.

The salary portion of the staffing budget includes a 4.5% cost-of-living adjustment to salaries, based on a trailing six-month average for the Bay Area CPI, which adds \$500 thousand in additional cost. SVCE is budgeting for a 3% average merit increase, to be determined by management during the upcoming annual review process, and which contributes another \$300 thousand in cost increases.

Other marketing, general and administration expenses, and professional services increase by about \$680 thousand. These primarily result from increased hardware, travel, training, and conference fees anticipated for a larger staff.

Staff is also currently evaluating employee benefits package updates, focusing on incentives to promote staff retention. The current budget does not include these changes, but staff will likely present some benefits updates later during the fiscal year.

Programs Budget

SVCE will continue incorporating projected programs spending over the 5-year forecast period into the reserve balance projections and now in forecasting the ending net position as shown in the 5-year financial forecast in attachment 2. For this coming fiscal year, programs spending is projected to be \$27.1 million, with an additional \$3.5 million in CRCR⁷ spending and \$600 thousand in E-Elec (all electric) rate discounts.

The proposed budget transfers an additional \$8.9 million, two percent of projected revenues and \$2.2 million from the PG&E nuclear allocation savings, representing the portfolio's savings from accepting the allocation.

Non-Operating Revenues

Non-operating revenues are projected to increase by about \$1.6 million. This increase reflects the interest earned on the growing reserve balance.

Set Aside for a Building Fund

During the budget framework discussions, staff proposed considering buying a building instead of leasing the current office space. SVCE's current lease runs through September 2025. Before the lease expires, staff will need time to explore the alternatives of buying versus leasing. Staff also wants SVCE to be able to pursue attractive property opportunities as they arise. Staff proposes to continue assessing the market opportunities and return to the Board later to earmark a portion of reserves for potential building purchase. An initial back-of-the-envelope analysis indicates a roughly 10-year breakeven period compared to leasing for 20,000 sf space at a cost of around \$20 million.

STRATEGIC PLAN

The recommendation supports all goals of the Board adopted Strategic Plan. Specifically, the recommendations strongly support Goal 15 - "Commit to maintaining a strong financial position" and the accompanying Measures "Present Balanced budget that achieves cash reserve targets, weighs tradeoffs between customer value proposition and contribution to reserves and maintains competitive rates"; "Board presentation on 5-year financial forecast once a year" and "Maintain investment grade credit rating from one of the three credit rating agencies."

ALTERNATIVE

Staff is open to feedback and suggestions from the Board. At a strategic level, the Board can change the discount to PG&E, reduce the carbon-free percent of power supply, reduce the renewable percent of the power supply, and cut the programs expenditure.

Considering any of the above options requires an extensive policy-level discussion, and the Board can consider them while finalizing SVCE's strategic priorities and revisit the customer discount rate when actual PCIA and PG&E generation rates are known. Given a sufficient projected reserve balance that maintains SVCE's stable financial condition, staff does not recommend any specific reductions.

FISCAL IMPACT

The FY 2023-24 Proposed Operating Budget includes total revenues of \$440.4 million and total expenses, non-operating revenues, and transfers of \$432.7 million, resulting in a surplus/contribution to reserves of \$7.7 million.

⁷ CRCR, the ~\$10 million Customer Relief and Community Resilience Program, was established in 2020 to provide COVID credit payments to income-qualified customers as bill assistance, support local workforce training, and fund resiliency planning and capital expenditures at SVCE member cities.

ATTACHMENTS

- 1. FY 2023-24 Proposed Operating Budget
- 2. 5-year Financial Forecast
- 3. Updated Financial Reserves Policy

Attachment 1

MY 2022-23 ADJUSTED	FY 2023-24 PROPOSED	Year ove Chan	
BUDGET	BUDGET	\$	%
,	,	, ,	-16.2%
,	, -		90.7%
			0.0%
523,958	440,404	(83,554)	- <u>15.9</u> %
302 436	301 624	(812)	-0.2%
			-62.9%
101,022	40,100	(02,142)	02.0
3,413	3,413	0	0.0%
1,470	1,470	0	0.0%
11,285	15,406	4,121	36.5%
8,016	8,084	68	0.9%
862	1,349	487	56.5%
131	21	(110)	-84.0%
525	551	26	5.0%
	,		11.3%
<u>27,559</u>	<u>32,361</u>	<u>4,802</u>	<u>17.4</u> %
103,963	<u>16,419</u>	(87,544)	- <u>84.2</u> %
3.870	5.501	1.631	42.1%
0	0	0	-
3,870	<u>5,501</u>	<u>1,631</u>	<u>42.1</u> %
3	3	0	0.0%
		-	0.070
<u>3</u>	<u>3</u>	<u>o</u>	<u>0.0</u> %
<u>3,867</u>	<u>5,498</u>	<u>1,631</u>	<u>42.2</u> %
107 920	24 047	(95 042)	70 79/
107,030	21,917	(65,913)	- <u>79.7</u> %
200	50	(150)	-75.0%
0	0	0	-
9,765	8,874	(891)	-9.1%
	2,188		15.2%
9,500	0	,	-100.0%
			0.0%
3,600	3,136	(464)	-12.9%
604.40=	644040	(600.047)	E0 70/
<u>\$34,465</u>	<u>\$14,248</u>	(\$20,217)	- <u>58.7</u> %
\$72.26E	\$7,660	(\$65.606)	-89.5%
	3,413 1,470 11,285 8,016 862 131 525 1,857 27,559 103,963 3,870 3,870 0 3,870 107,830	ADJUSTED BUDGET PROPOSED BUDGET 522,853 1,055 2,012 50 50 50 50 50 50 50 50 50 50 50 50 50	ADJUSTED BUDGET PROPOSED BUDGET Chan \$ 522,853 438,342 (84,511) 1,055 2,012 957 50 50 0 523,958 440,404 (83,554) 392,436 391,624 (812) 131,522 48,780 (82,742) 3,413 3,413 0 1,470 1,470 0 11,285 15,406 4,121 8,016 8,084 68 862 1,349 487 131 21 (110) 525 551 26 1,857 2,067 209 27,559 32,361 4,802 103,963 16,419 (87,544) 3,870 5,501 1,631 3 3 0 0 0 0 3,867 5,498 1,631 107,830 21,917 (85,913) 200 50 (150) 0

Attachment 2

(\$ in Thousands)												
	F	Y22-23 FY23-24		FY24-25			FY25-26		FY26-27		FY27-28	
Operating Revenue	(Adju	sted Budget)	((Budget)		Forecast)	(Forecast)		(Forecast)		(I	Forecast)
Electricity Sales, Net ¹	\$	531,561	\$	435,206	\$	471,956	\$	503,130	\$	515,879	\$	517,916
GreenPrime Electricity Premium		1,055		2,012		2,322		2,334		2,351		2,371
Total Operating Revenues		532,616		437,218		474,278		505,464		518,230		520,287
Operating Expense												
Power Supply	\$	391,261	\$	391,624	\$	400,877	\$	416,343	\$	450,677	\$	439,648
Operating Margin		141,355		45,594		73,401		89,122		67,553		80,639
Data Management		3,413		3,413		3,583		3,762		3,950		4,148
PG&E Service Fees		1,470		1,470		1,544		1,621		1,702		1,787
Staff Compensation		11,285		15,406		16,176		16,985		17,834		18,726
Consultants and other Professional Fees		8,016		8,084		8,570		9,084		9,629		10,206
Communications and Noticing		993		1,370		1,439		1,511		1,586		1,666
General and Administration		2,382		2,618		2,749		2,886		3,031		3,182
Transfers to Programs Fund		34,265		11,062		9,486		10,109		10,365		10,406
Total Operating Expenses		453,085		435,047		444,422		462,300		498,773		489,769
Operating Income		79,531		2,171		29,856		43,164		19,457		30,518
Nonoperating Revenue (Expense)												
Other Income		182		50		51		51		52		52
Investment Income		-		5,501		5,251		5,683		6,389		6,635
Capital Outlay & Financing Costs		(200)		(53)		(53)		(53)		(53)		(53)
Grant Income		-		-		-		-		-		-
Total Non-Operating Revenue (Expense)		(18)		5,498		5,249		5,681		6,387		6,634
Change in Net Position/Available for Reserves		79,513		7,669		35,104		48,845		25,844		37,152
Begin, Net Position		212,684		320,082		307,579		329,143		364,448		376,752
Adjustment for Program Expenditure ²		27,886		(20,173)		(13,540)		(13,540)		(13,540)		0
End, Net Position	\$	320,082	\$	307,579	\$	329,143	\$	364,448	\$	376,752	\$	413,904

Assumptions: 4% overall discount relative to comparable PG&E rates for Oct-Dec 2023 and 1% for Jan-Sept 2024. FY 23-24 includes additional bill credit to low income customers totaling \$3.14 million (1% of Jan-Sept 2024 Revenue). 1% discount for FY24-25, FY25-26, FY26-27 and FY27-28.

² Each year the Board transfers funds from the Operating Budget to the Decarboniztion Programs Fund as shown in the above forecast under line item Transfers to Programs Fund. The line item Adjustment for Program Expenditure accounts for the difference between forecasted spend for programs versus the amount transfered to the fund. This adjustment is needed because program spending to date has been less than the amount transferred to the programs fund.

Days Cash On Hand (DCOH) at Year End	\$ 297,561	\$ 285,058	\$ 306,622	\$ 341,927	\$ 354,230	\$ 391,383
Days of cash on hand	255	229	244	262	252	292



Category: FINANCE

FINANCIAL RESERVES POLICY

I. PURPOSE

This Reserve Policy outlines the appropriate types and levels (minimum, goal, and maximum) of financial reserves as prescribed in the following policy. The primary reason for a reserve policy is to be prepared for contingencies, but other reasons also exist. Seven important purposes of a reserve policy are as follow:

- 1. Plan for contingencies. To maintain sufficient reserves to minimize rate increase due to market volatility(power supply shocks or maintain rate competitiveness), weather impacts on demands, economic downturns, emergencies (such as natural disasters), and regulatory changes.
- 2. Maintain good standing with rating agencies. By maintaining sufficient reserves, SVCE can preserve good credit ratings, allowing it to secure power at lower costs, that is, without posting credit enhancements, in the energy markets.
- **3. Avoid interest expense.** To avoid interest expense to cover short-term cash shortfalls by having sufficient reserves to use for this purpose, rather than debt.
- **4. Ensure cash availability when revenue is unavailable.**To bridge times of the year that normally see temporary low levels of cash.
- 5. Plan for anticipated future rate increases by gradually raising those rates, using reserves to cushion the full impact on customers over an extended time period. For example, if it is expected that rates are highly likely to increase in 3 to 5 years, higher reserves on hand can cushion those rate increases over a more gradual timeframe by drawing down on the accumulated funds that may be in excess of the reserves' goal.
- 6. Manage the risks identified in the Energy Risk Management Policy, which are:

Amended: 9/14/2022



Category: FINANCE

- Market price risk,
- Net revenue risk,
- Counterparty credit and performance risk,
- Load and generation volumetric risk,
- Operational risk,
- Liquidity risk, and
- Regulatory/legislative risk.
- 7. Establish clear expectations between the Board of Directors and staff. A formal reserve policy creates a shared understanding of the proper level and use of reserves.

II. POLICY

Reserve Levels Established

Financial reserves shall be set aside as follows:

The **Reserve targets** cover the operations of SVCE over a number of days in the event of emergencies or other significant unforeseen events. Three levels are defined, with the first being baseline. Given the purposes stated above, the Reserve shall be maintained at no less than the minimum described in (a) below. The reserve level described in (b) is recommended as the goal. The Maximum reserve level described in (c) would provide solid reserves for significant fluctuations in revenue or unforeseen circumstances. The Board shall review its reserve levels annually in context of SVCE's overall financial condition of the agency, as well as due to changes to the industry and/or risk factors as described in periodic review of targets below.

- (a) Minimum Operating Reserve (baseline) shall be the minimum maintained to cover 120 days of operations of the annual operating budget;
- **(b) An Operating Reserve goal** of covering 285300 days of operations of the annual operating budget;
- **(c) Maximum Operating Reserve** to cover 490 days of operations of the annual operating budget.

Amended: 9/14/2022



Category: FINANCE

Conditions for Use of Reserves

For purposes of this policy, use of reserves is defined as a projected or estimated¹ reduction in reserves by fiscal year-end. A temporary reduction in cash consistent with the expected peaks or dips in revenues and expenditures are normal cyclical occurrences to be expected during the fiscal year, and do not constitute a use of reserves.

The reserves may be drawn down upon by the CEO during the year, up to the lesser of 10% of the year's budgeted cost of power supply, or \$30 million, to:

- 1. Cover increases in power supply expenses due to spikes in costs and/or due to higher customer demand;
- 2. Provide necessary funds to make up for unanticipated revenue shortfalls;
- 3. Meet any margin or collateral posting requirements under energy supply contracts; and,
- 4. Provide resources to meet emergency expenditures.

If further use of reserves are needed to manage the operations of the organization, or if the use of reserves would bring the balance below the Minimum Operating Reserve baseline, the CEO must present recommendations to the Board and the Board must authorize any such use.

Replenishment of Reserves

Should SVCE drawdown reserves below the Minimum Operating Reserve level, SVCE will implement plans to return reserves to their minimum targets within two (2) fiscal years. Such plans will be provided in subsequent budget and rate discussions with the Board.

Page | 3 Amended: 9/14/2022

¹ It is not practical to wait the formal fiscal year end closing of the accounting records to determine if the reserves have been "used". Therefore, it is appropriate for staff to estimate reserve levels, with the important amount being what is estimated for fiscal year end.



Category: FINANCE

Excess Reserves

If reserve funds are projected to exceed the maximum level, the CEO shall present options for consideration by the Board of Directors for proper disposition of those reserves during the next budget cycle.

Reserves between Minimum and Maximum

To the extent that reserves are above target and below the maximum, no other action by SVCE would be required.

Periodic Review of Reserve Goals

Reserve goals shall be periodically reviewed for consistency with industry standards. If significant risk factors are eliminated or significant new risks emerge as a result of changes in the industry, legislation, or economic conditions, the basis of the reserve policy shall be reviewed, and the funding level shall be adjusted accordingly. Unless the Reserves are approaching minimum levels, formal Reserve funding discussions with the Board may await the next budget process.

Reporting

Reserve levels will be monitored during the fiscal year and reported in the quarterly financial reports. Reserve target levels (minimum and maximum) will be analyzed annually, and over/under reserve determination shall be made in conjunction with year-end financial results. These results will be reported to the Board of Directors as part of the year-end financial report presentation.

Amended: 9/14/2022



Silicon Valley Clean Energy Board of Directors Meeting

August 9, 2023

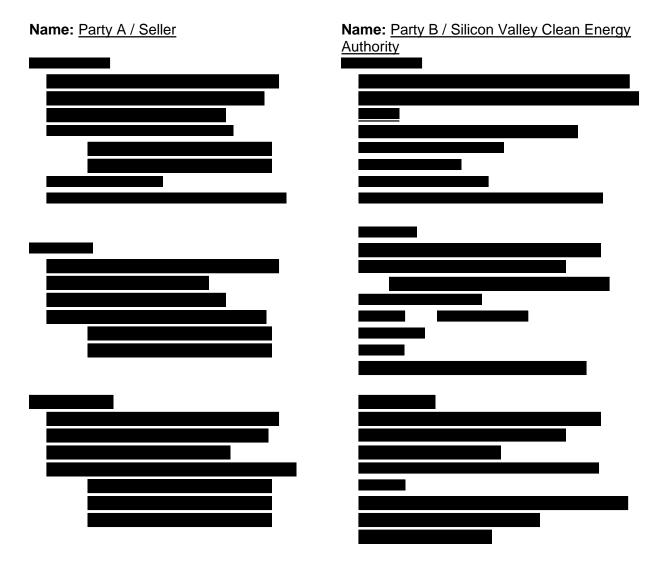
Appendix A

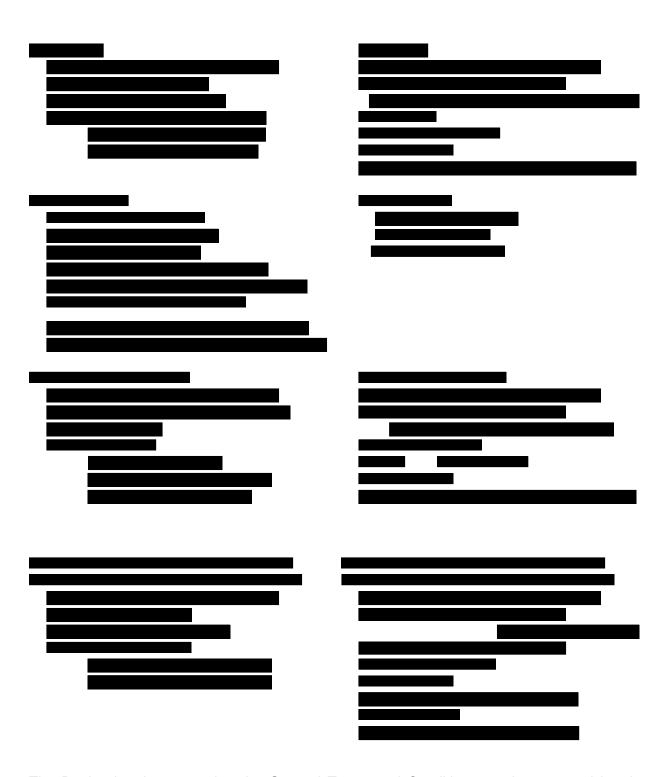
Power Resource Contracts Executed by CEO

LONG FORM CONFIRMATION FOR RESOURCE ADEQUACY CAPACITY PRODUCT

Resource Adequacy Contract Number: SDGE_SVCEA_AUG-SEP 2023_SELL_SYS_FLEX

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 June 6, 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.





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

Article Two

Transaction Terms and Conditions

☐ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four Remedies for Failure to Deliver or Receive	Accelerated Payment of Damages. If not checked, inapplicable.
Article Five Events of Default; Remedies	☐ Cross Default for Party A: ☐ Party A: N/A Cross Default Amount: N/A ☐ Other Entity: N/A Cross Default Amount: N/A
	 □ Cross Default for Party B: □ Party B: N/A □ Other Entity: N/A □ Cross Default Amount: N/A □ Cross Default Amount: N/A
	 5.6 Closeout Setoff ☑ Option A (Applicable if no other selection is made.) ☐ Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
	□ Option C (No Setoff)
Article 8 Credit and Collateral Requirements	8.1 Party A Credit Protection: (a) Financial Information: Option A Option B Specify: Option C Specify: (b) Credit Assurances: Not Applicable Applicable
	(c) Collateral Threshold: 图Not Applicable 日 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☐ ApplicableIf 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: 国Not Applicable 口 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
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	 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.
	Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".
	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 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.
- 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 RIGH 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.
- "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.
- "Capacity Replacement Price" means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed the "Replacement Price" for this Transaction.
- 1.9 "Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit's Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 "Compliance Showing" means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 "Confirmation" has the meaning specified in the introductory paragraph.
- 1.12 "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 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.
- 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.

- 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.
- 1.44 "Planned Outage" shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.45 "Product" has the meaning specified in Section 3.1.
- 1.46 "Prorated Percentage of Unit Factor" means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.47 "Prorated Percentage of Unit Flexible Factor" means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.

- 1.48 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.49 "RA Substitute Capacity" means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.
- 1.50 "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.51 "RAR Showing" means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.52 "Replacement Capacity" means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.53 "Replacement Unit" means a generating unit providing Replacement Capacity.
- 1.54 "Resource Category" shall be as described in the CPUC Filing Guide.
- 1.55 "RMR Contract" has the meaning set forth in the Tariff.
- 1.56 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc. or its successor).
- 1.57 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.
- 1.58 "Seller" has the meaning specified in the introductory paragraph.
- 1.59 "Showing Month" shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.60 "Substitution Rules" has the meaning set forth in Section 3.8(b).
- 1.61 "Supply Plan" has the meaning set forth in the Tariff and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes.
- 1.62 "Tariff" means the tariff and protocol provisions, including any applicable CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.
- 1.63 "Transaction" has the meaning specified in the introductory paragraph.
- 1.64 "Unit" or "Units" shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.65 "Unit Contract Quantity" means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.66 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.

- 1.67 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- "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 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.

3.3 <u>Delivery Period</u>

The "Delivery Period" shall be August 1, 2023, through September 30, 2023, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

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:

Unit Contract Quantity (MW) Capacity Attributes (excluding Flexible RA Attributes) Attributes * CAISO Resource ID should match a Unit described in Appendix A

CONTRACT QUANTITY TABLE

3.5 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8, and;
- (b) Seller shall submit, or cause each Unit's SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.8(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

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 CAISO 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:

Monthly Payment =
$$\sum_{n=1}^{d} (A_n * B_n * 1000)$$

where:

- **A** = applicable Contract Price (in \$/kW-day) for that calendar day
- **B** = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity "**B**" exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity "**B**" be less than zero.
- **d** = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

Capacity Price (\$/kW-day)

CAPACITY PRICE TABLE

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.

- (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 <u>Seller's Duty to Provide Replacement Capacity</u>

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.

<u>provided</u> 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

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; <u>provided</u>, 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 CAISO 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 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 cash or a Letter of Credit in substantially the same form as attached hereto as Appendix B in the amount of the amount of the 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. <u>Declaration of an Early Termination Date and Calculation of Settlement Amounts</u>

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]

Silicon Valley Clean Energy Authority

a California joint powers authority

IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the date first above written.

a California corporation

SAN DIEGO GAS & ELECTRIC COMPANY

Ву:	Docusigned by: Girish Balachandran 5CA64B9AC4C24C3	By: BB43C9758847486
Name:	Girish Balachandran	Joe Pasquito Name:
Title:	CEO	Title: Market Analysis Manager
		APPROVED as to legal form

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	Aug23-2.58% Sep23-4.29%
Unit EFC (MW)	169.25
Flexible Category	1
Prorated Percentage of Unit Flexible Factor	Aug23-5.32% Sep23-8.86%
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
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None

Run Hour Restrictions	None
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Appendix B

Form of Letter of Credit

LETTER OF CREDIT FORM

LETTER O Reference	
Transaction	n Date:
BENEFICI <i>A</i>	ARY:
San Diego	Gas & Electric Company
Ladies and	l Gentlemen:
California c	(the "Bank") hereby establishes this Irrevocable letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a corporation (the "Beneficiary"), for the account of, acorporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., New on the Expiration Date (as hereinafter defined).
preceding E For the pur	of Credit shall be of no further force or effect upon the close of business onor, if such day is not a Business Day (as hereinafter defined), on the next Business Day, unless extended in accordance with the terms of this Letter of Credit. poses hereof, "Business Day" shall mean any day on which commercial banks are zed or required to close in New York, New York.
Beneficiary	the terms and conditions herein, funds under this Letter of Credit are available to the by presentation in compliance on or prior to 5:00 p.m. New York time, on or prior to ion Date, of the following:
	e original of this Letter of Credit and all amendments (or photocopy of the original for tial drawings); and
form	e Drawing Certificate issued in the form of Attachment A attached hereto and which ns an integral part hereof, duly completed and purportedly bearing the signature of ar horized representative of the Beneficiary.
requisite do other numb facsimile or understood	nding the foregoing, any drawing hereunder may be requested by transmitting the ocuments as described above to the Bank by facsimile at or such per as specified from time to time by the Bank or by electronic signature. The relectronic signature transmittal shall be deemed delivered when received. It is that drawings made by facsimile transmittal or electronic signature are deemed to rative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored except as described in the succeeding paragraph.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600 ("UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(8) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDITSHALLGOVERN. MATTERSNOTCOVERED BY THE UCP SHALL BEGOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

AUTHORIZED SIGNATURE for Bank	
By:	
Title:	

SDG&E RA Confirmation Template

ATTACHMENT A TO APPENDIX B DRAWING CERTIFICATE TO [ISSUING BANK NAME] IRREVOCABLE STANDBY LETTER OF CREDIT

Refer	ence Nu	ımber
		(Sample Text)
Bank	VING C Address	ERTIFICATE S
Subje	ect:	Irrevocable Standby Letter of Credit Reference Number:
of Sa	n Diego	ned, an authorized representative Gas & Electric Company (the "Beneficiary"), hereby certifies ank Name] (the "Bank"), and (the "Applicant"), with reference to
Irrevo	cable S	tandby Letter of Credit No, dated , (the "Letter of Credit"), issued by the Bank
in fav	or of the	, (the "Letter of Credit"), issued by the Bank Beneficiary, as follows as of the date hereof:
iii iav	01 01 1110	beneficiary, as follows as of the date hereof.
1.	to	eneficiary is entitled to draw under the Letter of Credit an amount equal, for the following reason(s) [check applicable provision]:
		An Event of Default, as defined in the [INSERT] Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing or an amount is due and unpaid to Beneficiary by Applicant.
	[]B.	The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
2.	under /100th does i	d upon the foregoing, the Beneficiary hereby makes demand the Letter of Credit for payment of U.S. DOLLARS AND as (U.S.\$
3.	be wir	s paid pursuant to the provisions of the Letter of Credit shall re-transferred to the Beneficiary in accordance with the ing instructions:

WSPP RESOURCE ADEQUACY CONFIRMATION LETTER BETWEEN HIGH DESERT POWER PROJECT, LLC AND SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the transaction between HIGH DESERT POWER PROJECT, LLC, a California limited liability company ("Seller"), and SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of May 25, 2023 (the "Confirmation Effective Date"), in which Seller agrees to sell and deliver and Buyer agrees to purchase and receive the right to the Product, as such term is defined in Article 3 of this Confirmation (the "Transaction"). This Transaction is governed by the WSPP Agreement effective as of 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 shall 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 (as defined herein).

1. **DEFINITIONS**

- **1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- **1.2** "Annual Supply Plan" has the meaning set forth in the Tariff.
- **1.3** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- **1.4** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- **1.5** "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- **1.6** "Buyer" as used herein shall have the same meaning as "Purchaser" under the WSPP Agreement.
- 1.7 "CAISO" means the California Independent System Operator or its successor.
- 1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Sections 4 and 21.3(2) of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- **1.9** "CIRA Tool" means the CAISO Customer Interface for Resource Adequacy application, or its successor platform.
- **1.10** "Compliance Showings" means the Flexible RAR Showings, LAR Showings, and RAR Showings, as applicable to the Product.
- **1.11** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- **1.12** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- **1.13** "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.
- **1.14** "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.

- 1.15 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MW) set forth in the "Contract Quantity (MW)" table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- **1.16** "Control Area" has the meaning set forth in the Tariff.
- **1.17** "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-02-022 and 19-06-026, and subsequent decisions related to resource adequacy issued from time to time by the CPUC.
- **1.18** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- **1.19** "Delivery Period" has the meaning specified in Section 4.1 hereof.
- **1.20** "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.21 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus (i) any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity, and (ii) any reductions resulting from events described under an event described at Section B-3.9 of Service Schedule B in the WSPP Agreement that excuse Seller's performance.
- **1.22** "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.23 "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.24 "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- **1.25** "Firm RA Product" has the meaning specified in the Section 3.3 hereof.
- **1.26** "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.
- **1.27** "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- **1.28** "Flexible RA Product" has the meaning specified in the Section 3.2 hereof.
- **1.29** "GADS" means the Generating Availability Data System or its successor.
- **1.30** "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.31 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

- 1.32 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.33 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.34 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- **1.35** "LRA" has the meaning set forth in the Tariff.
- **1.36** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- **1.37** "Maximum Cumulative Capacity" or "MCC" shall have the meaning specified in Section 2.1 hereof.
- **1.38** "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- **1.39** "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.40 "Monthly Supply Plan" has the meaning set forth in the Tariff.
- **1.41** "NERC" means the North American Electric Reliability Council, or its successor.
- **1.42** "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.
- 1.43 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- **1.44** "Non-Availability Charges" has the meaning set forth in the Tariff.
- 1.45 "Notification Deadline" means in respect of a Showing Month the day that is fifteen (15) Business Days before the Compliance Showing deadlines. For illustrative purposes only, as of the Confirmation Effective Date, the applicable Compliance Showing deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO or CPUC from time to time throughout the Delivery Period
- 1.46 "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.47 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a CAISOapproved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- **1.48** "Product" has the meaning specified in Article 3 hereof.

- 1.49 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- **1.50** "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- **1.51** "RAR" or "Resource Adequacy Requirements" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.52 "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes. If the CPUC adopts a Slice of Day reform, or another similar type of reform that results in a change in the RA capacity product, these additional attributes shall be included within the definition of "RAR Attributes".
- 1.53 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff, the CPUC Decisions or LRA having jurisdiction.
- **1.54** "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- **1.55** "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.
- **1.56** "Resource Adequacy Plan" has the meaning set forth in the Tariff.
- **1.57** "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- **1.58** "Scheduling Coordinator" or "SC" has the same meaning as in the Tariff.
- **1.59** "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.60 "Showing Month" is the calendar month during the Delivery Period that is the subject of the Compliance Showing. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.
- **1.61** "Shown Unit" means a Unit, or any Replacement Unit meeting the requirements of Section 4.5 of this Confirmation from which RA Capacity will be provided by Seller to Buyer and that Seller identifies annually pursuant to Article 2.
- **1.62** "Subsequent Buyer" means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
- **1.63** "Substitute Capacity" has the meaning set forth in the Tariff for "RA Substitute Capacity."
- **1.64** "Supply Plan" has the meaning set forth in the Tariff.
- **1.65** "Tariff" means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- **1.66** "Transaction" has the meaning specified in the introductory paragraph hereof.
- 1.67 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the

CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO's methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

"Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT DESIGNATION

2.1 Seller to Annually Designate Shown Unit

- (a) On an annual basis during the term of this Transaction, Seller shall designate the Shown Unit(s) from which RA Capacity will be provided to Buyer for the following calendar year by providing Buyer with the specific Unit information contained in Appendix A by no later than the earlier of (i) October 1, or (ii) thirty (30) calendar days before the deadline for the yearahead Compliance Showing.
- (b) The Shown Unit shall meet the Product characteristics and Contract Quantity specified in Sections 3 and 4 and the Resource Category requirements set forth in Section 2.1(c). Under no circumstances shall the Shown Unit be a coal-fired generating facility.
- (c) The Shown Unit shall qualify as a Maximum Cumulative Capacity ("MCC") Resource Category 4 resource, which is described in the CPUC's 2022 Filing Guide as being able to run or operate in "All Hours (planned availability is unrestricted)" and which is available all 24 hours of each day.
- (d) Nothing in this Section 2.1 shall be construed to limit the applicability of Sections 4.4 (Adjustment to Contract Quantity) or 4.5 (Alternate Capacity and Replacement Units) of this Confirmation.
- (e) Seller's designation of the Shown Unit each year shall not in any way (i) convert the Contingent Firm RA Product being sold under this Confirmation into Firm RA Product, or (ii) cause any change to the Monthly RA Capacity Payment.

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be

made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than an Uncontrollable Force, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Unit in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that the Unit is not available to provide the full amount of the Contract Quantity due to any reduction in Contract Quantity in accordance with Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 4.5. If Seller fails to provide Buyer with the Designated RA Capacity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Designated RA Capacity during such period, Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

4. DELIVERY AND PAYMENT

4.1 <u>Delivery Period</u>

4.2 <u>Delivery Point</u>

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MW)

Month/Year	Contract Quantity (MW)

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is providing Contingent Firm RA Product and is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (i) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month, provided such reduction is able to be reflected on the Supply Plans in accordance with the Tariff; or (ii) provide Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC after the Confirmation Effective Date as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (A) the applicable Showing Month Contract Quantity and (B) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (C) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, subject to written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (x) the same Unit, provided the Unit has sufficient remaining and available Product and/or (y) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (A) the applicable Showing Month Contract Quantity and (B) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (C) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (x) the same Unit, provided the Unit has sufficient remaining and available Product and/or (y) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) <u>UCAP</u>: 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, Seller shall have the right, but not the obligation, to send written notice to Buyer of such change ("Notice of Successor Value"). Following receipt of such notice from Seller, the Parties shall negotiate

an amendment to this Confirmation so that from and after such replacement Seller shall convey to Buyer an amount of qualifying capacity of such Unit of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity but (ii) no more than the Contract Quantity. Under such amendment, Seller's pro-rata delivery obligation shall be equal to the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

4.5 <u>Alternate Capacity and Replacement Units</u>

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternate Capacity and identify Replacement Units meeting the above requirements and the Resource Category requirements set forth in Section 2.1(c), no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing deadline applicable for the Showing Months as specified in Section 4.1, in accordance with the Tariff, identifying and confirming the transfer of the Designated RA Capacity to Buyer for each Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation).
- (b) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Seller error, and are rejected by CAISO, or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract

Quantity if (x) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month, (y) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Buyer error or (z) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 <u>Damages for Failure to Provide Designated RA Capacity</u>

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month and such failure is not excused under the terms of this Confirmation, then the following shall apply:

- Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 9 of the WSPP Agreement, the following damages in lieu of damages specified in Section 9, 21.3 and 22 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price (excluding amounts included in Section 4.7(a)) times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 <u>Indemnities for Failure to Deliver Contract Quantity</u>

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 4.4 and 4.5;

- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity actually delivered by Seller to Buyer for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.6 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Seller shall deliver invoices to the address(es) specified herein; provided, however, that changes to invoice, payment, wire transfer and other banking information 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.

RA CAPACITY PRICE TABLE

Contract	RA Capacity Price
Year/Month	(\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during

the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Section 9 of the WSPP Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 9 of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Uncontrollable Force that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6. RESERVED CAPACITY AND SUBSTITUTE CAPACITY

- 6.1 For any Showing Month, no later than three (3) Business Days before the applicable Compliance Showing deadline, Buyer may designate 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 that Showing Month ("Reserved Capacity").
- 6.2 Subject to Section 6.3, all Reserved Capacity shall be treated as Designated RA Capacity actually delivered under Section 4.6(b) for purposes of calculating the Monthly RA Capacity Payment.
- In any Showing Month in which Buyer has designated Reserved Capacity, Buyer may request, in writing, that Seller make the Reserved Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month ("Substitute Capacity Request") with the following schedule.
 - (a) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO prior to the Showing Month (e.g., through the CAISO RA Substitute Capacity Assessment), the Substitute Capacity Request shall be received by Seller at least two (2) Business Days prior to the applicable CAISO scheduling deadline. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 6.3, provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Unit due to a forced outage of the Unit, including as a result of an Uncontrollable Force, Seller shall not be liable for any amounts under Sections 4.7 and 4.8.
 - (b) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO after the commencement of the Showing Month, the Substitute Capacity Request shall be received by Seller at least five (5) Business Days before Buyer submits its Substitute Capacity in CIRA. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 6.3, provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Unit due to a forced outage of the Unit, including as a result of an Uncontrollable Force, Seller shall not be liable for any amounts under Sections 4.7 and 4.8.

6.4 Nothing in this Article 6 changes any of Seller or Buyer's rights or obligations under this Confirmation with respect to Contract Quantity not designated as Reserved Capacity.

7. OTHER BUYER AND SELLER COVENANTS

- 7.1 Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable, or that of a Subsequent Buyer under Article 10. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:
 - (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
 - (b) Subject to Section 4.4, negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, in each case occurring after the Confirmation Effective Date, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO:
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities

Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller shall notify the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller shall notify the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller shall notify each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. ASSIGNMENT

Neither Party may voluntarily assign its rights under this Transaction without the prior written consent of the other Party; provided, however, that notwithstanding anything in the WSPP Agreement to the contrary, such consent shall not be unreasonably withheld, conditioned, or delayed if the proposed assignee has a Credit Rating that is at least investment grade or its creditworthiness is otherwise reasonably satisfactory.

9. CONFIDENTIALITY

The Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. Buyer may also disclose to any Subsequent Buyer whatever information regarding this Transaction is commercially reasonable for such party to evaluate the re-sale; provided that any Subsequent Buyer agrees in writing to maintain the confidentiality of such information consistent with this Section 9. Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of confidential information regarding this Transaction, Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be responsible for taking whatever legal steps are necessary to prevent Buyer's release of such information to the third party. Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.).

10. BUYER'S RE-SALE OF PRODUCT

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder; provided, however, that (i) any Subsequent Buyer assumes all of Buyer's obligations and liabilities hereunder, and (ii) any such re-sale does not increase Seller's obligations or liabilities hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product. If Seller incurs any liability to a Subsequent Buyer due to the failure of Buyer or the Subsequent Buyer to comply with this Confirmation, Buyer will be liable to Seller for the same amounts Buyer would have owed Supplier under this Confirmation if Buyer had not resold the Product.
- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two (2) Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month. Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's reasonable instructions with respect to providing such resold Product to Subsequent Buyers of such resold Product; and (ii) take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct Seller 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 Seller and the Unit's SC shall comply with Buyer's direction and Buyer shall retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

11. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

12. COLLATERAL REQUIREMENTS

Notwithstanding 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.

13. OTHER WSPP AGREEMENT CHANGES

13.1 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) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"
- (f) In Section 22.3(f), delete the entire provision and replace it with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as

provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."

- (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) The phrase "arbitration or" is deleted from the first line of Section 34.4.
- (k) The following shall be inserted as a new Section 34.5:

"34.5LIMITATION 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."

- (I) Section 37 is amended by inserting the following in the beginning of the section: "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."

13.2 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.

13.3 No Recourse to Members of Buyer

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

13.4 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

13.5 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, 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.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

a California limited liability company	AUTHORITY, a California joint power authority Docusigned by:	
By: 11 LL	Bv:	Girish Balachandran
Name: JAM ES SUEHD	Name:	Girish Balachandran
Title: 1/P + Spansky	Title:	CEO

Appendix A

Shown Unit Information

Name:	High Desert Power Project Aggregate
Location:	Victorville, CA
CAISO Resource ID:	HIDSRT_2_UNITS
Unit SCID:	TS30
Unit NQC:	830
Unit EFC:	630
Resource Type:	Natural Gas
Resource Category (MCC 1, 2, 3 or 4):	4 - (available all 24 hours)
Flexible Capacity Category (1, 2 or 3):	1
Path 26 (North or South):	South
Local Capacity Area (if any, as of Confirmation Effective Date):	n/a
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	none
Run Hour Restrictions:	None. Available 24 hours per day.

Appendix B

Notice Information



MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER - RESOURCE ADEQUACY BETWEEN SILICON VALLEY CLEAN ENERGY AUTHORITY AND 3PR TRADING, INC.

This Confirmation Letter ("<u>Confirmation</u>") confirms the Transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("<u>Buyer</u>") and **3PR Trading**, **Inc.** ("<u>Seller</u>"), each individually a "<u>Party</u>" and together the "<u>Parties</u>", dated as of June 1, 2023 (the "<u>Confirmation Effective Date</u>") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the EEI Master Power Purchase and Sale Agreement, effective as of November 28, 2016, as amended from time to time (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall control and shall govern the rights and obligations of the Parties in connection with the Transaction.

ARTICLE 1. DEFINITIONS

- **1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- **1.2** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- **1.3** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- **1.4** "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- **1.5** "Buyer" has the meaning specified in the introductory paragraph hereof.
- **1.6** "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- **1.8** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- **1.9** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- **1.11** "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the Contract Quantity (MWs) table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month, as such amount may be adjusted pursuant to Section 4.4.
- **1.13** "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-080, 10-06-080,

- 025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- **1.14** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- **1.15** "Delivery Period" has the meaning specified in Section 4.1 hereof.
- **1.16** "Delivery Point" has the meaning specified in Section 4.2 hereof.
- "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- **1.19** "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- **1.21** "Generic RA Product" means Designated RA Capacity consisting of RA Attributes and, if applicable, LAR Attributes, which does not include Flexible RA Attributes.
- "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.24 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.25 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.26 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource

- adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- **1.27** "LRA" means Local Regulatory Authority as defined in the Tariff.
- **1.28** "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- **1.29** "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- **1.30** "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- **1.31** "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.32 "Non-Excusable Event" means any event, other than a Planned Outage that is acceptably noticed pursuant to the Notification Deadline and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- **1.33** "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- **1.34** "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- "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.
- **1.36** "Product" has the meaning specified in Article 3 hereof.
- "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- **1.39** "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- **1.41** "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- **1.42** "Replacement Unit" has the meaning specified in Section 4.5.
- **1.43** "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- **1.44** "Scheduling Coordinator" has the same meaning as in the Tariff.

- **1.45** "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.47 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- **1.48** "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- **1.49** "Transaction" for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- **1.50** "<u>Unit</u>" or "<u>Units</u>" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired generating facility.
- 1.51 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	Colgate Hydro Unit 2
Location	Yuba County, CA
CAISO Resource ID	COLGAT_7_UNIT_2
Unit NQC	Varies by Month
Unit EFC	Varies by Month
Resource Type	Hydro
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	Sierra
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type		
☐ Flexible	RA Product	
	Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to elivered by Seller to Buyer hereunder, shall include the following Product attributes:	
[]	Flexible RA Attributes with LAR Attributes	
[]	Flexible RA Attributes with RA Attributes	
⊠ Generic	RA Product	

ellelle NA Floudet

The Designated RA Capacity is a Generic RA Pro	roduct. For avoidance of doubt, the Generic RA Product to
be delivered by Seller to Buyer hereunder, shall in	include the following Product attributes:

[X] RA Attributes[] LAR Attributes

3.3 Delivery Obligation

⊠ Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply all or some of the Alternate Capacity to fulfill the remainder of the Contract Quantity or portion thereof, from one or more Replacement Units pursuant to Section 4.5 during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period	
The Delivery Period shall be:	

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	Contract Quantity (MWs)	

4.4 Adjustments to Contract Quantity

- (a) <u>Planned Outages</u>: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to (i) a Planned Outage as set forth in Section 4.4(a) above or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.
- (c) If Seller fails to provide Buyer any portion of the Designated RA Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase such Product from a third party. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof to the extent the failure to deliver the Contract Quantity is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.
- The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for (c) the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error, and are rejected by CAISO and not corrected by the time the CIRA Tool is locked for the applicable Showing Month or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation and Buyer has not provided instruction to withhold all or part of the Designated RA Capacity. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Article 6 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RΔ	CAPA	CITY	PRICE	TABLE

Contract Month	RAR Capacity Price (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above, if applicable, and so long as the availability to earn such revenues does not increase Seller's obligations or liabilities hereunder). In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to

Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. RESERVED

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 17-09-020 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7,1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; <u>provided</u>, <u>however</u>, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the Master Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. NO RECOURSE TO MEMBERS OF BUYER

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers	3PR TRADING, INC.	
authority Docusigned by: Girish Balachandran	DocuSigned by:	
By: Scalaboration Market Mar	By: Enc Hulin	
Name:	Name: Eric Hulin	
Title: CEO	Title:	

MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER BETWEEN

SILICON VALLEY CLEAN ENERGY AUTHORITY

AND

SOUTHERN CALIFORNIA EDISON COMPANY

This confirmation letter including all appendices hereto ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority ("Counterparty") and Southern California Edison Company ("SCE"), each individually a "Party" and together the "Parties" dated as of 6/2/2023 (the "Confirmation Effective Date") in the "Parties", dated as of (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute ("EEI") Master Power Purchase and Sale Agreement between the Parties, effective as of February 7, 2018, along with the Cover Sheet, any amendments and annexes thereto (the "Master Agreement"), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are referred to collectively herein as the "Collateral Annex") (the Master Agreement and the Collateral Annex shall be collectively referred to as the "EEI Agreement"). The EEI Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

ARTICLE 1. TRANSACTION TERMS

1.1 Product; Elections

Product: The product, including the Capacity Attributes of the

Unit(s), as defined in Appendix C, or Alternate Unit(s)

provided in accordance with Section 2.3.

Flexible Capacity: The Product shall include Flexible Capacity if identified in

Appendix B as applicable.

1.2 Delivery and Receipt of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller the Product in the amount of the applicable Contract Quantity for each month of the Delivery Period.

1.3 Delivery Period and Term

- (a) <u>Delivery Period</u>. The Delivery Period is as specified in Appendix B of this Confirmation in the row titled "Delivery Period", unless terminated earlier in accordance with the terms of this Agreement.
- (b) <u>Term</u>. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.4 Contract Quantity

The Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled "Contract Quantity."

1.5 Flexible Capacity

If the Parties have designated Flexible Capacity as "Applicable", then the Flexible Capacity included in the Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled "Flexible Capacity."

1.6 Contract Price

The Contract Price means, for any Showing Month, the price specified in Appendix B of this Confirmation under the heading titled "Contract Price," for such Showing Month.

ARTICLE 2. DELIVERY OBLIGATIONS

2.1 Seller's Delivery Obligations

Seller shall provide Buyer with the Expected Contract Quantity of Product for each Showing Month consistent with the following:

(a) <u>Supply Plan Obligation</u>. Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months as specified in Sections 1.4 and 1.5 herein, in accordance with the CAISO Tariff 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 Buyer for each Showing Month (the "Supply Plan Obligation").

- (b) Showing Month Notice. If (i) Seller intends to utilize an Alternate Unit in accordance with Section 2.3 to satisfy its Supply Plan Obligation, or (ii) Seller intends to deliver less than the Contract Quantity of Product for such Showing Month for any reason, then Seller shall, or shall cause the Unit's SC to, submit written notification to Buyer (the "Showing Month Notice"), no later than the Compliance Notification Deadline, identifying either or both of the Alternate Units in accordance with Section 2.3 and the Expected Contract Quantity of Product if such amount is less than the Contract Quantity of Product, as applicable.
- (c) <u>Contract Quantity Unit Allocation</u>. If Seller is delivering Product to Buyer from more than one Unit, Seller shall deliver such Product to Buyer from each Unit in accordance with the Contract Quantity Unit Allocation, as set forth in Appendix C; provided, Seller may modify the Contract Quantity Unit Allocation from time to time by providing email notice to Buyer's Supply Plan contact, as set forth in Appendix D, no later than the initial Compliance Showing Deadline for each Showing Month.

2.2 Adjustments to Contract Quantity

Seller shall deliver to Buyer the Contract Quantity of Product for each Showing Month consistent with the following:

- (a) <u>Planned Outages</u>: 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 if the following conditions are satisfied:
 - (i) Seller notifies Buyer no later than the Compliance Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's Compliance Showings applicable to that month as a result of such Planned Outage; and
 - (ii) such reduction to the Contract Quantity of Product can be reflected on Supply Plans in accordance with the CAISO Tariff.
- (b) Reductions in Unit NQC and Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Confirmation Effective Date as determined by the CAISO. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Alternate Units, provided, that in each case Seller provides and identifies such Alternate Units in accordance with Section 2.3.

(c) Reductions in Seller Supply Agreement: Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event that the underlying Seller supply agreement results in Seller's inability to deliver the Product to Buyer in accordance with this Agreement. Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from Alternate Units, provided, that in each case Seller provides and identifies such Alternate Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

Seller may, at no cost to Buyer, provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Buyer no later than the Compliance Notification Deadline for such Showing Month of its intent to provide Product from and identify alternate units that (i) are like-for-like units similar to the Unit originally identified in Appendix C and have the same Capacity Attributes of the Unit originally identified in Appendix C, including the Resource Category and the Unit EFC Category; (ii) are accepted by the CAISO, and (iii) otherwise that satisfy the requirements of this Agreement ("Alternate Units");
- (b) Seller shall, or shall cause the Unit's SC to submit a Monthly Supply Plan and an Annual Supply Plan, as applicable, that includes the Alternate Units, in accordance with Section 2.1(a) hereof for such Showing Month;
- (c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month, then any such Alternate Units shall not be deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) - (c) of this Section 2.3, once Seller has identified in writing any Alternate Units that meet the requirements of this Section 2.3, then any such Alternate Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

2.4 <u>Damages for Failure to Provide Capacity</u>

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any Showing Month, in accordance with Section 2.1 (the "Replacement Obligation"), in each case as applicable, then the following shall apply:

(a) Buyer may, but shall not be required to, replace all or any portion of the Replacement Obligation for the applicable Showing Month with capacity having equivalent Capacity Attributes as the Expected Contract Quantity;

provided, if, using commercially reasonable efforts, Buyer is unable to acquire capacity having equivalent Capacity Attributes for any portion of any Showing Month, Buyer may replace such portion of the Replacement Obligation with capacity having Capacity Attributes in excess of the Contract Quantity (the "Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to purchase Replacement Capacity. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner to minimize damages in procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, including any transaction costs and expenses incurred in connection with such procurement, plus (B) each applicable Replacement Capacity Price multiplied by the aggregate amount of Replacement Obligation neither provided by Seller as Alternate Capacity nor purchased by Buyer as Replacement Capacity, for all applicable portions of the applicable Showing Month pursuant to Section 2.4(a), and (ii) the Replacement Obligation minus the Alternate Capacity, not provided for all applicable portions of the applicable Showing Month times the Contract Price for that month. Buyer's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and shall include supporting documentation.

2.5 Indemnities for Failure to Deliver Expected Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines, or costs assessed against Buyer by the CPUC or the CAISO, resulting from all or any of the following:

- (a) Seller's failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;
- (b) Seller's failure to provide a Showing Month Notice for any portion of the Delivery Period;
- (c) Seller's or the Unit's SC's failure to timely or accurately submit, or otherwise satisfy its Supply Plan Obligation for any portion of the Expected Contract Quantity or any portion of the Delivery Period; or
- (d) any other failure by Seller to perform its obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines, and costs.

2.6 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation, in accordance with Applicable Laws and CPUC Decisions ("Resold Product"); provided, with respect to Resold Product that includes the sale of Capacity Attributes that impact Seller's obligations under this Confirmation, Buyer agrees to: (a) notify Seller that such a sale has occurred; (b) provide Seller with the information described in Appendix E; and (c) notify Seller of any subsequent changes to the information in Appendix E with respect to any particular sale; in each case promptly following such sale and in no event later than the initial Compliance Showing Deadline for each Showing Month. Subject to Article 6 below, Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product; and (ii) take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product.

Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 2.4 and 2.5, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser. Buyer acknowledges and agrees that with respect to any Resold Product, if Seller incurs any liability to any purchaser of such Resold Product due to the failure of Buyer to comply with the terms of this Confirmation, and Buyer would have had liability to Seller under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Buyer shall be liable to Seller under this Confirmation for the amounts it would have been liable to Seller for had such Resold Product not been sold to a subsequent purchaser.

2.7 CAISO Offer Requirements

Seller shall, or cause each Unit's SC to, schedule with, or make available to, the CAISO the Expected Contract Quantity for each Unit in compliance with the CAISO Tariff, and shall, or shall cause each Unit's SC, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

2.8 Unit SC's Substitution Obligation

After the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit's SC for a Showing Month in accordance with the CAISO Tariff, and if the CAISO determines that any portion of the Expected Contract Quantity for any portion of a Showing Month that was shown by Buyer in its Compliance Showings requires outage substitution in accordance with Section 40.9.3.6 of the CAISO Tariff because the Unit, or Alternate Unit, as applicable, is scheduled to take an outage (planned or otherwise) (such amount requiring outage substitution, the "SC Substitute Capacity"), then: (a) Seller shall have no liability under Sections 2.4 or 2.5 with respect to such SC Substitute Capacity; and (b) Seller shall have no liability to Buyer for any costs that are allocated to Buyer by the CAISO for any CPM Capacity procured by the CAISO pursuant to the Capacity Procurement Mechanism and that are related to such SC Substitute Capacity.

ARTICLE 3. PAYMENT

3.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly Payment to Seller, after the applicable Showing Month, as follows:

Monthly Payment = $(A \times B \times 1,000)$

where:

A = applicable Contract Price for that Showing Month.

B = The amount of Contract Quantity of Product actually delivered by Seller to Buyer pursuant to and consistent with Section 2.1 and, if applicable, Section 2.3, for the applicable Showing Month.

The Monthly Payment calculation shall be rounded to two decimal places.

3.2 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) energy sales, (iii) ancillary services, and (iv) black start or reactive power services.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism or its successor, RUC Availability Payments, or its successor, but excluding payments described in Sections 3.2(a)(i)-(iv)). To the extent permitted by the CAISO Tariff, Seller

shall, or shall cause each Unit's SC to, submit RUC Availability Bids for the Expected Contract Quantity for each Unit for each hour of the Delivery Period at a bid price of Zero Dollars (\$0) per MW per hour, regardless of whether each Unit is shown on a Supply Plan for the applicable Showing Month.

- (c) In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,
 - (iii) all such Buyer revenues described in this Section 3.2, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity; and
 - (iv) all such Seller, or a Unit's SC, owner, or operator revenues described in this Section 3.2, but received by Buyer shall be remitted to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each Showing Month provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

3.3 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party.

ARTICLE 4. OTHER BUYER AND SELLER COVENANTS

4.1 <u>Seller's and Buyer's Duty to Take Action to Allow the Utilization of the</u> Product

Buyer and Seller shall, throughout the Delivery Period: (a) cause the Benefiting Load Serving Entity SCID to be included in all applicable Supply Plans; (b) execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Section 2.6; and (c) cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. If during the Delivery Period, there is a change to the Benefiting Load Serving Entity SCID, the Parties agree to communicate such changes to each other promptly. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Authority having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

4.2 <u>Seller's Representations, Warranties and Covenants</u>

- (a) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
 - (i) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (ii) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
 - (iii) Seller shall comply with Applicable Laws relating to the Product;
 - (iv) (A) Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Contract Quantity as CPM Capacity and (B) in the event the CAISO makes such a designation Seller shall, and shall cause the Unit's SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation;
 - (v) Buyer shall have the exclusive right to offer the Contract Quantity, or

any portion thereof, to the CAISO as CPM Capacity and Seller shall not, and shall cause the Unit's SC not to, offer any portion of the Contract Quantity to the CAISO as CPM Capacity or accept any designation of any portion thereof as CPM Capacity;

- (vi) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (vii) Seller shall cause the Unit's SC, owner and operator to comply with Applicable Laws relating to the Product;
- (viii) Buyer shall have no liability for the failure of Seller or the failure of the Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.
- (ix) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit does not exceed the Unit NQC or Unit EFC for that Unit;
- (x) Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, with respect to each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff and this Confirmation;
- (xi) Seller has notified the SC of the Unit that Seller is obligated to cause the Unit's SC to provide to the Buyer, on or prior to the Compliance Notification Deadline, the applicable Expected Contract Quantity of the Unit for such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (xii) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
- (b) Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, all of the information set forth on Appendix C hereto is true, correct and complete.

ARTICLE 5. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that: (i) Buyer may disclose the Contract Quantity or any applicable portion of the Contract Quantity,

including any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable, under this Transaction to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable; (ii) Seller may disclose the transfer of the Contract Quantity and the applicable Expected Contract Quantity (as well as any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable) for each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; (iii) both Parties may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the Independent Evaluator; and (iv) Buyer and the Independent Evaluator may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the California Energy Commission, and participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

ARTICLE 6. HOLDBACK

No later than five (5) Business Days before the deadline for the initial Compliance Showing Deadline with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Unit's SC not to list, a portion or all of a Unit's applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 2.1 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.4 or 2.5. Seller shall, or shall cause the Unit's SC to, comply with Buyer's request under this Article 6.

ARTICLE 7. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with FERC Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42. Seller also agrees that it will not, in any filings, if any, made subject to FERC Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 8. COLLATERAL REQUIREMENTS

8.1 <u>Counterparty Collateral Requirements</u>

Notwithstanding anything to the contrary contained in the EEI Agreement, Counterparty shall have a Full Floating Independent Amount if Counterparty or its Guarantor, if any, does not maintain Credit Ratings of at least (a) BBB- from S&P and Baa3 from Moody's, if such entity is rated by the Ratings Agencies, or (b) BBB- by S&P or Baa3 by Moody's if such entity is rated by only one Ratings Agency. The Full Floating Independent Amount shall equal the value set forth in Appendix B of this Confirmation. Commencing after the initial Compliance Showing Deadline of the first Showing Month of the Delivery Period, and for each initial Compliance Showing Deadline during the Delivery Period thereafter, the Full Floating Independent Amount shall be reduced to twenty percent (20%) of the sum of the FFIA Monthly Payments for the Next Showing Month and all remaining months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Full Floating Independent Amount for Counterparty shall be added to the Exposure Amount for SCE and subtracted from the Exposure Amount for Counterparty.

For the purposes of calculating Exposure, the Monthly Payment shall be deemed accrued and payable upon the initial Compliance Showing Deadline for the applicable Showing Month.

8.2 Current Mark-To-Market Value

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy Capacity product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction.

8.3 <u>Credit Terms</u>

The Parties agree that the credit and collateral provisions of the EEI Agreement shall govern this Transaction; provided, however, that for purposes of calculating a Party's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, with respect to this Transaction only (a) if Counterparty has Exposure to SCE, then the amount of Exposure for this Transaction is deemed to be zero dollars (\$0), and (b) in no event shall SCE be required to post or maintain an Independent Amount with Counterparty.

ARTICLE 9. OTHER

9.1 <u>Declaration of an Early Termination Date and Calculation of Settlement</u> Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement, provided that, with respect to this Transaction only, the following language is added at the end of Section 5.2 of the Master Agreement, with any terms which are defined in this Confirmation being used in the Master Agreement with the definitions given to such terms in this Confirmation:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any Governmental Authority having jurisdiction, because Buyer is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties or fines, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

9.2 No Waiver

The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default. Waiver by either Party of any failure to comply with any timeline or deadline by the other Party as provided herein in any instance, shall not be deemed a waiver of any failure to comply with such timeline or deadline in the future, or otherwise establish a course of performance.

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In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date first written:

SILICON VALLEY CLEAN ENERGY AUTHORITY,

a California joint powers authority.

By: Girish Baladhandran

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Name: Girish Balachandran

Title: Chief Executive Officer

Date: 5/23/2023

SOUTHERN CALIFORNIA EDISON COMPANY,

a California corporation.

By: Constantine Louis

Name: Constantine Louie

Title: Senior Manager, Energy Trading

Date: 6/2/2023

APPENDIX A DEFINED TERMS

- "Agreement" has the meaning specified in the introductory paragraph of this Confirmation.
- "<u>Alternate Capacity</u>" means Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.
- "Alternate Unit" means a generating unit meeting the requirements specified in Section 2.3.
- "Annual Supply Plan" has the meaning set forth in the CAISO Tariff.
- "Applicable Laws" means the CAISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project, the Unit or the terms of this Agreement.
- "Availability Incentive Payments" has the meaning set forth in the CAISO Tariff.
- "Availability Standards" has the meaning set forth in the CAISO Tariff.
- "Benefiting Load Serving Entity SCID" is as specified in Appendix D.
- "Buyer" has the meaning specified in Appendix B.
- "<u>CAISO</u>" means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- "CAISO Control Area" has the meaning set forth in the CAISO Tariff.
- "CAISO Controlled Grid" has the meaning as set forth in the CAISO Tariff.
- "CAISO Tariff" means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.
- "Capacity Attributes" means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:
 - (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;

- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligation;

provided that, notwithstanding the foregoing, Capacity Attributes shall exclude all flexible capacity resource adequacy attributes, characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled associated with the Unit; provided further, notwithstanding the foregoing, Capacity Attributes shall exclude intra-month substitution resource adequacy attributes.

"Capacity Procurement Mechanism" has the meaning set forth in the CAISO Tariff.

"Collateral Annex" has the meaning specified in the introductory paragraph of this Confirmation.

"Compliance Notification Deadline" means, for each Showing Month, fifteen (15) Business Days before the Compliance Showing Deadline.

"Compliance Obligations" means the RAR and Local RAR.

"Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings) and (b) RAR compliance or advisory showings (or similar or successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"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 Confirmation 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 Term.

"Confirmation" has the meaning specified in the introductory paragraph of this Confirmation.

"Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

"Contract Price" means, for any Showing Month, the price specified in Appendix B under the column titled "Contract Price" for such Showing Month.

"Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled "Contract Quantity", which Seller has agreed to provide to Buyer from the Unit for each Showing Month.

"Contract Quantity Unit Allocation" means, if Seller is delivering Product to Buyer from more than one Unit, the allocation of Contract Quantity Seller will deliver from each Unit, as set forth in Appendix C and as modified by Seller from time to time in accordance with Section 2.1(c).

"Cover Sheet" has the meaning specified in the introductory paragraph of this Confirmation.

"CPM Capacity" has the meaning set forth in the CAISO Tariff.

"CPUC" means the California Public Utilities Commission.

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

"CPUC Filing Guide" is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"Current Mark-to-Market Value" has the meaning specified in Section 8.2

"Delivery Period" has the meaning specified in Section 1.3(a).

"EEI" has the meaning specified in the introductory paragraph of this Confirmation.

"EEI Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Expected Contract Quantity" means, with respect to any Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and after giving effect to any reductions to Contract Quantity as specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

"FFIA Monthly Payment" shall be the Monthly Payment calculated using the Contract Quantity rather than the Expected Contract Quantity, such that variable B in the formula

for Monthly Payment shall be as follows: B = the Contract Quantity of Product for each applicable Showing Month.

"Governmental Authority" means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

"Independent Evaluator" has the meaning set forth in CPUC Decision 04-12-048.

"Local Capacity Area" has the meaning set forth in the CAISO Tariff.

"Local RAR" means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

"Maintenance Outage" has the meaning set forth in the CAISO Tariff.

"Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Monthly Payment" has the meaning specified in Section 3.1.

"Monthly Supply Plan" has the meaning set forth in the CAISO Tariff.

"MW" means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

"Net Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

"Next Showing Month" means the next calendar month for which a Compliance Showing will be made.

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

"Planned Outage" means a maintenance outage taken by the Unit originally identified in Appendix C, as such maintenance outage is determined by the applicable Unit or Unit SC.

"Product" means the Capacity Attributes of the Unit(s), including any capacity from RMR Contracts for the applicable Unit, or its successor, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor; provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and
- (c) the Parties agree that, under this Confirmation, if the CAISO", CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.
- "RAR" means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.
- "Replacement Capacity" has the meaning specified in Section 2.4.
- "Replacement Capacity Price" means the market price for Product with Capacity Attributes reasonably equivalent to the quantity of Product not provided by Seller under this Confirmation, as determined in the manner upon which market prices are determined under Section 5.2(b) of the Master Agreement. For purposes of this Transaction and Confirmation, the "Replacement Capacity Price" shall be deemed to be the "Replacement Price" as defined in Section 1.51 of the Master Agreement.
- "Replacement Obligation" has the meaning specified in Section 2.4.
- "Resold Product" has the meaning specified in Section 2.6.
- "Resource Category" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- "RMR Contracts" has the meaning set forth in the CAISO Tariff.
- "RUC Availability Bid" has the meaning set forth in the CAISO Tariff.
- "RUC Availability Payment" has the meaning set forth in the CAISO Tariff.
- "SC" has the meaning set forth in the CAISO Tariff.
- "SC Substitute Capacity" has the meaning set forth in Section 2.8.
- "Seller" has the meaning specified in Appendix B.

"Showing Month" shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"Showing Month Notice" has the meaning specified in Section 2.1(b).

"Supply Plan" has the meaning set forth in the CAISO Tariff.

"Supply Plan Obligation" has the meaning specified in Section 2.1(a).

"Term" has the meaning specified in Section 1.3(b).

"<u>Unit</u>" shall mean the generation assets described in Appendix C (including any Alternate Units), from which Product is provided by Seller to Buyer.

"<u>Unit NQC</u>" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ADDITIONAL DEFINED TERMS

To the extent that the Parties have selected Flexible Capacity as being "Applicable", the following definitions shall be utilized in lieu of the corresponding definition, where appropriate, or in addition to the definitions set forth in the above Defined Terms:

"Capacity Attributes" means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR;
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations; and
- (d) flexible capacity resource adequacy attributes for the Unit, including, without limitation, the amount of Unit EFC and MWs associated with Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR;

provided, notwithstanding the foregoing, Capacity Attributes shall exclude intramonth substitution resource adequacy attributes.

"Compliance Obligations" means the RAR, Local RAR and Flexible RAR.

"Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled "Contract Quantity", which Seller has agreed to provide to Buyer from the Unit for each Showing Month, and which includes

Product which is Flexible Capacity in an amount equal to the amount identified in Appendix B. All Contract Quantity is Inflexible Capacity except to the extent identified as Flexible Capacity Appendix C.

"Effective Flexible Capacity" has the meaning set forth in the CAISO Tariff.

"Flexible Capacity" means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled "Flexible Capacity" which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are eligible to satisfy a load serving entity's Flexible RAR and which such MWs of Product are associated with MWs of the Unit that are part of the Unit EFC.

"Flexible RAR" means the flexible capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction and includes any non-binding advisory showings which a load serving entity is to make with respect to flexible capacity.

"Inflexible Capacity" means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled "Contract Quantity", minus the number of MWs of Product set forth in Appendix B under the column titled "Flexible Capacity", which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are not eligible to satisfy a load serving entity's Flexible RAR and which are Product associated MWs of the Unit that are not part of or outside the Unit EFC. Inflexible Capacity is also known as 'generic capacity'.

"Product" means the Capacity Attributes of the Unit, provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR

- provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (d) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area; and
- (e) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR whereby the Unit, or a portion of the Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of the Unit related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Unit which previously was not able to satisfy Flexible RAR.

"<u>Unit EFC</u>" means the Effective Flexible Capacity (in MWs) of the Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

"<u>Unit EFC Category</u>" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

APPENDIX B FLEXIBLE CAPACITY, DELIVERY PERIOD, CONTRACT QUANTITY, CONTRACT PRICE, AND FULL FLOATING INDEPENDENT AMOUNT

The quantities specified in this table will control in the event of a conflict between these values and those in Appendix C. The Parties agree to revise the Appendix C as necessary to ensure that the Contract Quantity and Flexible Capacity are satisfied in full.

Buyer	Silicon \	Silicon Valley Clean Energy Authority		
Seller	Southern	Southern California Edison Company		
	40		y:	
Flexible Capacity	/ 🔲 Ap	☐ Applicable ☑ Not applicable		
Delivery Period				
	-05			
		Contract	Flexible	Contract Price
Showing Month	Year	Quantity (MW)	Capacity (MW)	(\$/kW-month)
	1.01- X-1	- 10 VI VI		
		Full Floating Inde	pendent Amount	

APPENDIX C UNIT INFORMATION AND CONTRACT QUANTITY UNIT ALLOCATION

Unit 1 Information

Unit	1
CAISO Resource ID	BUCKBL_2_PL1X3
Unit Name	Blythe Energy Center
Current Scheduling Coordinator SCID	LSCE
Resource Fuel Type	Gas
Resource Category (1, 2, 3 or 4)	4
Unit EFC Category (1, 2, 3 or N/A)	N/A
Local Capacity Area (if applicable, as of Confirmation Effective Date)	CAISO System

Unit 1 Contract Quantity Unit Allocation

Unit NQC (1)	Unit EFC (2)	2023 Contract Quantity	2023 Flexible Capacity

- (1) Unit NQC (Net Qualifying Capacity in MW as of the Confirmation Effective Date)
- (2) If Flexible Capacity is designated as applicable in Section 1.1, Unit EFC (Effective Flexible Capacity in MW, as of the Confirmation Effective Date)

APPENDIX D SUPPLY PLAN INFORMATION

Benefitting load serving entity SCID:	LSVCE
Counterparty Supply Plan contact inform	nation:
SCE Supply Plan contact information ¹ :	

APPENDIX E SUBSEQUENT SALE INFORMATION

Contract Key ID:	
Subsequent sale contract quantity (in MW):	
Subsequent sale delivery period:	
Amount of Inflexible Capacity included in subsequent sale contract quantity (in MW):	
New benefitting load serving entity SC identification number:	

IMPORT CAPABILITY TRANSFER CONFIRMATION LETTER BETWEEN SONOMA CLEAN POWER AUTHORITY AND SILICON VALLEY CLEAN ENERGY

This confirmation letter including all appendices hereto ("Confirmation") confirms the transaction between Sonoma Clean Power Authority, a California joint powers authority ("Seller") and Silicon Valley Clean Energy, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of June 2, 2023 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation (the "Transaction"). This Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of August 26, 2022, along with any schedules and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1 TRANSACTION

1.1 **Product**

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Remaining Import Capability (the "Product"), at the Delivery Points in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

1.2 **Delivery Period and Term**

- (a) <u>Delivery Period</u>. The Delivery Period is inclusive, unless terminated earlier in accordance with the terms of this Agreement.
- (b) <u>Term.</u> The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.3 Contract Quantity, Contract Price, and Delivery Point

For the Delivery Period, Seller shall transfer the Product to Buyer in the amount as follows (the "Contract Quantity"), at the Contract Price, and for the following Delivery Points as specified in the Contract Quantity Table below:

Delivery Period	Delivery Point	Contract Quantity (MWs)	Contract Price (\$/kW-month)

ARTICLE 2 DELIVERY OBLIGATIONS

2.1 **Delivery**

Within three (3) Business Days from the Confirmation Effective Date, Seller shall transfer the Product to Buyer by registering the transfer with CAISO as a Bilateral Import Capability Transfer in the amount of the Contract Quantity for the applicable Contract Month, and completing any other action or documentation required by the CAISO to affect such transfer (the "Registration"). As soon as reasonably practicable thereafter, but no later than three (3) Business Days from Registration, Buyer shall accept and confirm Seller's Registration in CAISO's CIRA Tool and Buyer will then communicate to Seller by email as to whether the transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point was successful or unsuccessful. If the transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point is unsuccessful, the Parties shall begin the registration process set forth in this Section 2.1 again, until such time as the transfer is completed successfully.

2.2 **Buyer's Re-Sale of Product**

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

ARTICLE 3 PAYMENT

3.1 **One-Time Payment**

Buyer shall make a One-Time Payment to Seller for the Product within ten (10) Business Days after the later of: (a) Buyer's receipt of the Product; or (b) receipt of Seller's invoice.

The One-Time Payment is calculated as follows:

One-Time Payment =
$$\sum_{i}$$
n ($A_i \times B_i \times 1,000$)

where:

A = Contract Price (in $\frac{k}{w}$ -month) for Contract Month *i*

B = Contract Quantity (in MW) transferred by Seller for Contract Month

i =Each Contract Month

n = number of Contract Months

The One-Time Payment calculation shall be rounded to two decimal places.

3.2 **Offset Rights**

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Section 9 of the Master Agreement against any future amounts it may owe to the other Party.

ARTICLE 4 CONFIDENTIALITY

Notwithstanding Section 30 of the Master Agreement, the Parties agree that:

- (24) This Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 7920 et seq.);
- (b) both Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller's performance; and
- ©) in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority or the CAISO to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

ARTICLE 5 COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 6 GENERAL PROVISIONS

6.1 **Governing Law**

Section 24 of the WSPP Agreement is deleted and replaced with the following: "This WSPP Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law."

6.2 **Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.3 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

6.4 **Joint Powers Authority**

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 public entities separate from their constituent members. Each Party will solely be responsible for all of its debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it will 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's constituent members, in connection with this Confirmation.

Acknowledged and agreed to as of the Confirmation Effective Date.

SILICON VALLEY CLEAN ENERGY, a California joint powers authority

SONOMA CLEAN POWER AUTHORITY, a California joint powers authority

Ву:	Docusigned by: Girish Balachandran 5CA64B9AC4C24C3	By:Michael Koszalka	
Name:	Girish Balachandran	Name: Michael Koszalka	
Title:	CEO	Title: Chief Operating Officer	

SONOMA CLEAN POWER AUTHORITY, a California joint powers authority

Ву:	Del Enerson
Name:	Deb Emerson
Title:	Managing Director

APPENDIX A DEFINED TERMS

- "Agreement" has the meaning set forth in the introductory paragraph of this Confirmation.
- "Bilateral Import Capability Transfer" is the transfer of Remaining Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.
- "Branch Group" means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.
- "Buyer" has the meaning set forth in the introductory paragraph of this Confirmation and shall have the same meaning as "Purchaser" under the Master Agreement.
- "CAISO" means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- "CAISO Tariff" means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.
- "Confirmation" has the meaning set forth in the introductory paragraph of this Confirmation.
- "Confirmation Effective Date" has the meaning set forth in the introductory paragraph of this Confirmation.
- "Contract Month" means the month during the Delivery Period as set forth in the Contract Quantity Table in Section 1.3.
- "Contract Price" has the meaning set forth in the Contract Quantity Table in Section 1.3.
- "Contract Quantity" has the meaning set forth in the Contract Quantity Table in Section 1.3.
- "CPUC" means the California Public Utilities Commission.
- "Delivery Period" has the meaning set forth in Section 1.2(a).
- "Delivery Point" has the meaning set forth in the Contract Quantity Table in Section 1.3.
- "Governmental Authority" means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.
- "Intertie" has the meaning set forth in the CAISO Tariff.
- "Master Agreement" has the meaning set forth in the introductory paragraph of this Confirmation.

- "Maximum Import Capability" has the meaning set forth in the CAISO Tariff.
- "MW" means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.
- "One-Time Payment" has the meaning set forth in Section 3.1.
- "Product" has the meaning set forth in Section 1.1.
- "Registration" has the meaning set forth in Section 2.1.
- "Remaining Import Capability" has the meaning set forth in the CAISO Tariff.
- "SC" has the meaning set forth in the CAISO Tariff.
- "Seller" has the meaning set forth in the introductory paragraph of this Confirmation.
- "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.
- "Term" has the meaning set forth in Section 1.2(b).
- "WSPP Agreement" is defined in the introductory paragraph hereof.

CONFIRMATION LETTER BETWEEN SILICON VALLEY CLEAN ENERGY

AND

PENINSULA CLEAN ENERGY

This Confirmation Letter including all appendices hereto ("Confirmation") confirms the transaction between Peninsula Clean Energy, a California joint powers authority ("Seller"), and Silicon Valley Clean Energy, a joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of June 5, 2023 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation (the "Transaction"). This Transaction is governed the Western Systems Power Pool Agreement effective as of August 26, 2022, as amended from time to time, but not including any Exhibit or Service Schedule thereto unless and to the extent that such Exhibit or Service Schedule is expressly incorporated herein (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings described to them in the Master Agreement or, if not defined in the Master Agreement, in the CAISO Tariff. To the extent this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

ARTICLE 1. TRANSACTION TERMS

1.1 Product

Existing Contract Import Capability

1.2 Delivery of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller, the Product at the Delivery Point in the amount of the applicable Contract Quantity for each day of each month of the Delivery Period.

1.3 Delivery Period and Term

- (a) <u>Delivery Period</u>. The Delivery Period shall be inclusive, unless terminated earlier in accordance with the terms of this Agreement.
- (b) <u>Term</u>. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the

Delivery Period or (ii) the date the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.4 Delivery Point

The Delivery Point shall be the CAISO Branch Group corresponding to the CAISO Intertie PACI MSL (COB).

1.5 <u>Contract Quantity</u>

The Contract Quantity for each day of each applicable Contract Month is as follows:

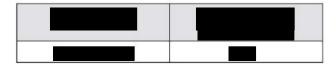
Contract Quantity (MWs for each day of such Contract Month)



1.6 Contract Price

The Contract Price means, for any Contract Month, the price specified in the Contract Price table as set forth below.

CONTRACT PRICE TABLE



ARTICLE 2. DELIVERY OBLIGATIONS

2.1 Delivery of Product

Within three (3) Business Days after the date that Seller receives the One-Time Payment from Buyer, Seller shall register the Bilateral Import Capability Transfer of the Product in the amount of the Contract Quantity at the Delivery Point in CAISO's CIRA Tool(or successor platform)(the "Registration"). Seller shall complete promptly such other actions required by the CAISO to effect such transfer. As soon as reasonably practicable thereafter, but no later than three (3) Business Days from Registration, Buyer shall accept and confirm Seller's Registration in CAISO's CIRA Tool and will then communicate to Seller whether the Bilateral Import Capability Transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point was successful or unsuccessful (a successful transfer, the "Transfer Completion Email"). If the Bilateral Import Capability Transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point is unsuccessful, the Parties shall begin the Registration process set forth in this Section 2.1 again, until the Parties receive a Transfer Completion Email.

2.2 **Buyer's Re-Sale of Product**

Buyer may re-sell, at its sole cost and expense, all or a portion of the Product acquired under this Confirmation.

ARTICLE 3. PAYMENT

3.1 One-Time Payment

Buyer shall make a payment ("One-Time Payment") to Seller no later than (10) Business Days after the date an invoice is received. Seller shall provide Buyer the invoice for the One-Time Payment no later than seven (7) Business Days from the Confirmation Effective Date.

The One-Time Payment shall be calculated as follows:

One-Time Payment = $\sum_{i=1}^{n} (A_i \times B_i \times 1000)$

where:

A = Contract Price (in %kW-month) for Contract Month *i*

B = Contract Quantity *i* (in MW) transferred by Seller for Contract Month *i*

i = Each Contract Month

n = number Contract Months

3.2 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Section 9 of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

ARTICLE 4. CONFIDENTIALITY

(a) Both Parties may disclose the terms and conditions of this Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the CEC, and any Governmental Authority; provided, that each disclosing Party shall use reasonable efforts to limit,

- to the extent possible, the information disclosed and the ability of any such applicable Governmental Authority or the CAISO to further disclose such information;
- (b) Both Parties may disclose the terms of this Confirmation to the CAISO, as necessary, to effectuate Seller's performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller's performance;
- (c) In the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price; and
- (d) Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.); and, in the event of a public records requests pursuant to this act or any other applicable law, either party may disclose this Confirmation and such disclosure shall not be a violation of this Article 4; provided, that each disclosing Party shall first provide notice of its intended disclosure and cooperate reasonably with the other party in such other party's efforts to maintain the confidentiality of this Confirmation or its contents.

ARTICLE 5. GENERAL PROVISIONS

5.1 Governing Law

Notwithstanding Section 24 of the Master Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.2 Collateral/Credit Requirements

Notwithstanding any provision in the Master Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.3 No Recourse to Members of Buyer and Seller

Buyer and Seller are each organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer and Seller will each solely be responsible for all of its debts, obligations and liabilities accruing and arising out of this Confirmation. Neither Buyer no Seller will have any rights and shall not make any claims, take any actions or assert any

remedies against any of the other party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of such other party or such other party's constituent members, in connection with this Confirmation.

5.4 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.5 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signature page follows]

In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date:

PENINSULA CLEAN ENERGY, a California joint powers authority SILICON VALLEY CLEAN ENERGY, a

California joint powers authority

By: Janis C. Pepper

Name: Janis C. Pepper

Title: CEO

By: Givish Baladian dran

Name: Girish Balachandran

Title: CEO

APPENDIX A

DEFINED TERMS

- "Agreement" has the meaning specified in the introductory paragraph of this Confirmation.
- "Bilateral Import Capability Transfer" is the transfer of Existing Contract Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.
- "Branch Group" means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.
- "Buyer" has the meaning specified in the introductory paragraph of this Confirmation and shall have the same meaning as "Purchaser" under the Master Agreement.
- "<u>CAISO</u>" means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- "<u>CAISO Tariff</u>" means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.
- "CEC" means the California Energy Commission.
- "Confirmation" has the meaning specified in the introductory paragraph of this Confirmation.
- "Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.
- "Contract Month" means the month during the Delivery Period as set forth in the Contract Quantity Table specified Section 1.5.
- "Contract Price" has the meaning specified in Section 1.6.
- "Contract Quantity" has the meaning specified in Section 1.5.
- "CPUC" means the California Public Utilities Commission.
- "Delivery Period" has the meaning specified in Section 1.3(a).
- "Delivery Point" has the meaning specified in Section 1.4.

- "Existing Contract Import Capability" has the meaning set forth in the CAISO Tariff.
- "Governmental Authority" means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.
- "Intertie" has the meaning set forth in the CAISO Tariff.
- "Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.
- "MW" means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.
- "Product" has the meaning specified in Section 1.1.
- "Registration" has the meaning specified in Section 2.1.
- "Scheduling Point" has the meaning set forth in the CAISO Tariff.
- "SC" has the meaning set forth in the CAISO Tariff.
- "Seller" has the meaning specified in the introductory paragraph of this Confirmation.
- "Term" has the meaning specified in Section 1.3(b).
- "Transfer Completion Email" has the meaning specified in Section 2.1

MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER _ RESOURCE ADEQUACY BETWEEN SHELL ENERGY NORTH AMERICA (US), L.P. AND SILICON VALLEY CLEAN ENERGY AUTHORITY

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US)**, **L.P.**, a Delaware limited partnership (" Seller") and **Silicon Valley Clean Energy Authority**, a California joint powers authority (" Buyer") , and each individually a " Party" and together the " Parties" , dated as of June 9, 2023 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of November 28, 2016, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- **1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- **1.2** "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.
- **1.3** "Availability Incentive Payments" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.
- **1.4** "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- **1.5** "Buyer" has the meaning specified in the introductory paragraph hereof.
- **1.6** "CAISO" means the California Independent System Operator Corporation or its successor.
- "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. 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 to be the "Replacement Price" as used in the Master Agreement.
- **1.8** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- **1.9** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- **1.10** "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- **1.11** "Contract Price" means, for any Monthly Delivery Period, the price for such Monthly Delivery Period as specified in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the "Contract Quantity Table" in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

- **1.13** "CPUC Decisions" means, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- **1.14** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- **1.15** "Delivery Period" has the meaning specified in Section 4.1 hereof.
- **1.16** "Delivery Point" has the meaning specified in Section 4.2 hereof.
- "Designated RA Capacity" shall be equal to, for each day during any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.18 "Effective Flexible Capacity" has the meaning specified for such term in the Tariff.
- 1.19 "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- **1.20** "Flexible RA Product" means Designated RA Capacity consisting of FCR Attributes, and, if applicable, LAR Attributes and/or RAR Attributes.
- "FCR Attributes" means, with respect to a Unit, any and all flexible resource adequacy attributes, that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and RAR Attributes.
- 1.22 "FCR Showing" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.23 "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, but not FCR Attributes.
- "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.

- 1.27 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.
- 1.28 "LRA" has the meaning set for in the Tariff for the term "Local Regulatory Authority".
- 1.29 "LSE" has the meaning specified in the Tariff for the term "Load Serving Entity".
- **1.30** "Master Agreement" has the meaning specified in the introductory paragraph hereof.
- **1.31** "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.32 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.34 "Non-Availability Charges" are as defined in the Tariff.
- "Notification Deadline" means, for each Showing Month, the date that is fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, FCR Showings and/or LAR Showings for such Showing Month, and (b) the Supply Plan fillings applicable to that Showing Month.
- **1.36** "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- **1.37** "Planned Outage" means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit.
- **1.38** "Product" has the meaning specified in Article 3 hereof.
- "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the applicable RA Attributes, and if applicable, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.40 "RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- **1.41** "RAR" means the resource adequacy requirements, exclusive of LAR established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as identified and existing as of the Confirmation Date by the Tariff, CPUC Decisions, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.43 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- **1.44** "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

- **1.45** "Replacement Unit" means any generating unit having comparable RAR Attributes, LAR Attributes and, if applicable, FCR Attributes to the Unit(s), meeting the requirements for a Unit specified herein and meeting the requirements specified in Section 4.5.
- **1.46** "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- **1.47** "Scheduling Coordinator" has the same meaning as in the Tariff.
- **1.48** "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.49 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions or Tariff. For illustrative purposes only, the monthly RAR Showing made in June is for the Showing Month of August.
- **1.50** "Supply Plan" has the meaning specified in the Tariff.
- **1.51** "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- **1.52** "Transaction" has the meaning specified in the introductory paragraph hereof.
- **1.53** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Unit EFC after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lessor of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.
- "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	Mesquite Solar 3
Location	Maricopa County, AZ
CAISO Resource ID	MSOLAR_2_SOLAR3
Unit SCID	DSWM
Unit NQC	Varies by Month
Unit EFC	N/A
Resource Type	Solar
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	South
Local Capacity Area (if any, as of Confirmation Effective Date)	None
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	N/A
Run Hour Restrictions	N/A

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and/or FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any pursuant to the Tariff any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 **Product Type**

•	<u>A Product</u> ed RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to y Seller to Buyer hereunder shall include the following Product attributes:
[] []	FCR Attributes with LAR Attributes FCR Attributes with RAR Attributes
	A <u>Product</u> ed RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product d by Seller to Buyer hereunder shall include the following Product attributes:
[X] []	RAR Attributes LAR Attributes

3.3 <u>Delivery Obligation</u>

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not able to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, and Seller provides notice of such by the Notification Deadline, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit(s) in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be:

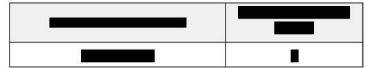
4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity Table



4.4 Adjustments to Contract Quantity

(a) <u>Planned Outages</u>: If Seller is unable to provide the applicable Contract Quantity for all or a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

- (b) Reductions in Unit NQC: If the Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.3, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC or Unit NQC as determined by the CAISO. If the Unit experiences such a reduction in Unit EFC or Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Alternative Capacity and Replacement Units

- (a) If Seller elects or is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller, at no additional cost to Buyer, may provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month. that Showing Month and Seller shall not be liable to Buyer or any other party for damages, including any cover costs, and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if Seller has provided Buyer with timely notice pursuant to this Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.
- (b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4 and Seller does not provide Alternate Capacity in an amount equal to that which allows Seller to provide the full Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase Replacement Capacity.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

Seller shall, on a timely basis, submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identity and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by Buyer.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Confirmation, then the following shall apply:

- Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity (a) not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RAR Attributes and no LAR Attributes or FCR Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable FCR Attributes and/or LAR Attributes ("Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller so long as such transactions are done at prevailing market prices. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the Replacement Capacity times the Capacity Replacement Price, and (B) the Designated RA Capacity not provided by Seller (less any Replacement Capacity) times the Capacity Replacement Price; and (ii) the Designated RA Capacity not provided by Seller times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may in addition to any other remedies that may be available to Buyer, offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article 6 of the Master Agreement. Seller will not be in breach of this Confirmation for any failure to provide any Designated RA Capacity so long as Seller complies with the provisions of this Section 4.7.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

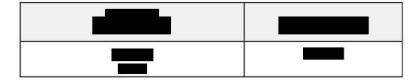
- (a) Seller's failure to provide any portion of the Designated RA Capacity if such failure is not excused under the terms of the Product or by Buyer's failure to perform;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may, in addition to any other remedies that may be available to Buyer, offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 RA Capacity Payment

In accordance with the terms of Article 6 of the Master Agreement, Buyer shall make an RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. The RA Capacity Payment shall be equal to the sum for each day during the Showing Month of the product of (a) the applicable Contract Price for such Showing Month, multiplied by (b) the Designated RA Capacity for the Monthly Delivery Period, multiplied by (c) 1,000. The final product of this RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA Capacity Price Table



4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain. or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full outage of that Unit, Seller is responsible for either scheduling or causing the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and performing, or causing the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. CHANGE IN LAW

If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure for Product set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or if a new product that is a derivative of the Product(s) contracted for herein is created, the Parties hereto agree to negotiate in good faith to amend this Confirmation, to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Confirmation or to provide Buyer with Product pursuant to another program if possible; provided, however, that neither Party shall be obligated to enter into any such amendment except in its sole discretion.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of

the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and/or FCR, as applicable, including, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer the applicable RAR, LAR and FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid pursuant to the "deliverability" standards established by the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation, which remain subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer the applicable RAR or FCR so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, CPUC, or other jurisdictional LRA of or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and FCR;
- (f) If Seller is the owner of any Unit, the cumulative amounts of LAR Attributes, RAR Attributes and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (g) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and FCR;
- (h) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to Buyer, no later than the Notification

- Deadline, of the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (j) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

Notwithstanding any agreement or obligation of confidentiality or non-disclosure between Buyer and Seller, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, If Buyer becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to Buyer under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any confidential information of Seller, Buyer may do so after providing Seller with prompt notice so that Seller, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure. Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, Buyer may make portions of this Confirmation available to the public as part of Buyer's process of seeking approval from its Board of Directors for this Transaction.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder. In the event of any such re-sale, Seller shall cause its Scheduling Coordinator to cooperate reasonably with Buyer and Buyer's transferee (and their respective Scheduling Coordinators) to allow such transferee to utilize the re-sold Product.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SHELL ENERGY NORTH AMERICA (US), L.P.

John W. Pillion

SILICON VALLEY CLEAN ENERGY AUTHORITY

Ву:

Name: John W. Pillion

Title: Confirmations _ Team Lead

Date: 6/9/23

Girish Balachandran Name:

Title: CEO

6/12/2023 Date:

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("<u>Seller</u>") and **East Bay Community Energy Authority**, a California joint powers authority ("<u>Purchaser</u>"), and each individually a "<u>Party</u>" and together the "<u>Parties</u>", dated as of June 8, 2023 (the "<u>Effective Date</u>"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "<u>Transaction</u>"). This Transaction is governed by the WSPP Agreement dated August 26, 2022 (the "<u>WSPP Agreement</u>"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "<u>Agreement</u>" 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.
- (c) 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 reductions in Unit NQC or Unit EFC of any Unit(s).
- (d) 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

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

failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing Deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for 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 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 ("<u>Planned Outage Schedule</u>") 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 two (2) Business Days before the Notification 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.

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.

(b) 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.

SVCE05RA2023

Joint CCA (Buys) WSPP Standard RA Confirmation 6/8/2023

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."

Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or

trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).*

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members

The Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Each Party will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it will 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 Purchaser or Purchaser's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 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 EOUITY 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."

6.9 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

Appendix A

SVCE05RA2023

Joint CCA (Buys) WSPP Standard RA Confirmation 6/8/2023

sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

Silicon Valley Clean Energy, a California joint powers authority

By: Girish Baladhandran

Name: Girish Balachandran______ Title: Chief Executive Officer_____ East Bay Community Energy, a California joint powers authority

By: Docusigned by:

Maric Fontenot

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Name: Marie Fontenot

Title: Vice President of Power Resources

APPENDIX A DEFINED TERMS

"<u>Alternate Capacity</u>" 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.

"<u>Flexible Capacity Category</u>" 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 thirteen (13) Calendar 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.

"<u>Prorated Percentage of Unit Factor</u>" 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 28 MW of System Generic Capacity (as defined under such confirmation) from Purchaser.

"Swap Reduction Option" has the meaning specified in Section 2.2(c).

"<u>Tariff</u>" 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.

"<u>Unit</u>" means the generation unit(s) described in Appendix B.

"<u>Unit EFC</u>" 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.

"<u>Unit NQC</u>" 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 Capa	acity						
and all Capacity Attributes related to such Product.										
Additional Product Information (fill in all that apply): CAISO Zone: System Resource Category (MCC Bucket): 4 CPUC Local Area (if applicable): N/A Flexible Capacity Category (if applicable): N/A										
Delivery Po	ivery Period:									
Contract Q	Quantity and Con	ntract Price:								
			·							

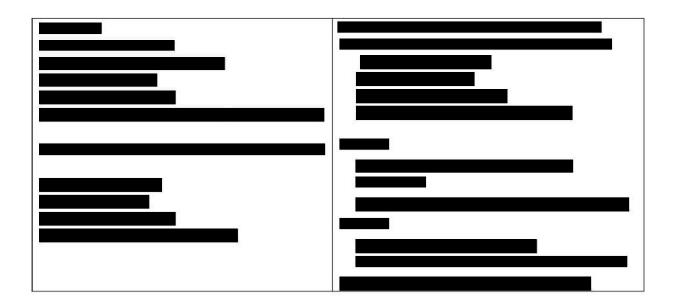
Unit 1

Unit Specific Information		
Resource Name	MOSS LANDING POWER BLOCK 1	
Physical Location	Moss Landing, CA	
CAISO Resource ID	MOSSLD_2_PSP1	
SCID of Resource	CYN1	
Unit NQC by month (e.g., Jan=50,Feb=65):	510.00	
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A	
Resource Type (e.g., gas, hydro, solar, etc.)	Thermal	
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	Bay Area	
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4	

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C NOTICE INFORMATION

Purchaser: East Bay Community Energy	Seller: Silicon Valley Clean Energy



APPENDIX D PLANNED OUTAGE SCHEDULE

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **East Bay Community Energy Authority**, 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 June 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 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.
- (c) 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 reductions in Unit NQC or Unit EFC of any Unit(s).
- (d) 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

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

failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such modification no later than two (2) Business Days before the initial Compliance Showing Deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for 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 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 ("<u>Planned Outage Schedule</u>") 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 two (2) Business Days before the Notification 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.

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.

(b) 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.

SVCE04RA2023

Joint CCA (Buys) WSPP Standard RA Confirmation 6/8/2023

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."

Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or

trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).*

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members

The Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Each Party will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it will 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 Purchaser or Purchaser's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 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 EOUITY 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."

6.9 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

SVCE04RA2023

Joint CCA (Buys) WSPP Standard RA Confirmation 6/8/2023

sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

East Bay Community Energy, a California joint powers authority

By: Manic Fontenot

Name: Marie Fontenot

Title: Vice President of Power Resources

Silicon Valley Clean Energy, a California joint powers authority

By: Girish Balachandran
SCA64BDAC4C24C3...
Name: Girish Balachandran

Title: Chief Executive

Officer____

APPENDIX A DEFINED TERMS

"<u>Alternate Capacity</u>" 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 thirteen (13) Calendar 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.

"<u>Prorated Percentage of Unit Factor</u>" 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 28 MW of System Generic Capacity (as defined under such confirmation) from Purchaser.

"Swap Reduction Option" has the meaning specified in Section 2.2(c).

"<u>Tariff</u>" 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.

"<u>Unit EFC</u>" 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.

"<u>Unit NQC</u>" 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									
and all Capacity Attributes related to such Product.										
CAISO Zone: Syste Resource Category CPUC Local Area (Flexible Capacity C		•••								
Delivery Period:	and Contract Price:									

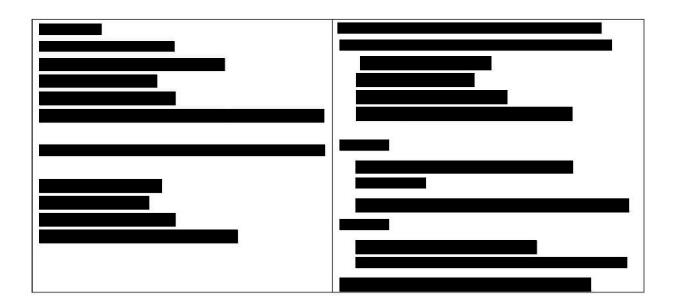
<u>Unit 1</u>

Unit Specific Information	
Resource Name	Palomar Energy Center
Physical Location	Escondido, CA
CAISO Resource ID	PALOMR_2_PL1X3
SCID of Resource	LSDGE
Unit NQC by month (e.g., Jan=50,Feb=65):	513.21
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Gas
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	San Diego-IV
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C NOTICE INFORMATION

Seller: East Bay Community Energy	Purchaser: Silicon Valley Clean Energy



APPENDIX D PLANNED OUTAGE SCHEDULE

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date	
N/A	N/A	N/A	N/A	N/A	

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **East Bay Community Energy Authority**, 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 June 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 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.
- (c) 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 reductions in Unit NQC or Unit EFC of any Unit(s).

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

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

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 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.

Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("<u>Planned Outage Schedule</u>") 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 two (2) Business Days before the Notification 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.

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.

(b) 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 <u>Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization</u>

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 <u>Seller's Representations and Warranties</u>

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:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent

release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).*

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members

The Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Each Party will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it

will 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 Purchaser or Purchaser's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 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 EOUITY 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:

[&]quot;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 be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

East Bay Community Energy, a
California joint powers authority

California joint powers authority

California joint powers authority

DocuSigned by:

By: Marie Fontenot

By: Girish Balachandran

By: Grand By:

Name: Marie Fontenot Name: Girish Balachandran

Title: Vice President of Power Resources Title: Chief Executive Officer

APPENDIX A DEFINED TERMS

"<u>Alternate Capacity</u>" 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.

"<u>Flexible Capacity Category</u>" 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 thirteen (13) Calendar 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.

"<u>Prorated Percentage of Unit Factor</u>" 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".

"<u>Tariff</u>" 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.

"<u>Unit</u>" means the generation unit(s) described in Appendix B.

"<u>Unit EFC</u>" 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.

"<u>Unit NQC</u>" 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 Capa	city
and all Capacity Attr	ributes related to such Produ	uct.	
CAISO Zone: Syster Resource Category (CPUC Local Area (i	MCC Bucket): 4		
Contract Quantity	and Contract Price:		_

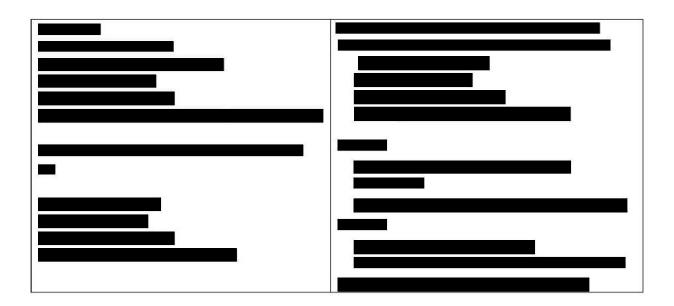
<u>Unit 1</u>

Unit Specific Information	
Resource Name	Tulare Solar 5
Physical Location	
CAISO Resource ID	VESTAL_2_TS5SR1
SCID of Resource	
Unit NQC by month (e.g., Jan=50,Feb=65):	6.92
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Solar
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C NOTICE INFORMATION

Seller: East Bay Community Energy	Purchaser: Silicon Valley Clean Energy



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	

Appendix D - 1

EEI RESOURCE ADEQUACY CONFIRMATION

This confirmation ("Confirmation") confirms the transaction between Direct Energy Business Marketing, LLC ("DEBM"), ("Party A") and Silicon Valley Clean Energy Authority ("Party B"), each individually a "Party" and together the "Parties", dated as of June 6, 2023 (the "Effective Date"), by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties dated November 28, 2016 as amended from time to time (the "Master Agreement"). The Master Agreement and this Confirmation, including any applicable appendices, exhibits or amendments hereto, shall be collectively referred to herein as the "Agreement" and shall constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff. References to Sections are references to Sections of this Confirmation unless stated to be references to Sections of the Master Agreement or a statute.

The terms of the Transaction to which this Confirmation relates are as follows:

Seller:	Direct Energy Business M LLC	Marketing,	Buyer:	Silicon Valley Clean Energy Authority
Product	:		R Local ed in Appen	1 0
Contrac	t Price (\$/kW-day):			
Contrac	t Quantity (MW):			
Delivery	Period:			
Unit Inf	ormation:	Describ	ed in Apper	ndix B
Paymen	t Terms:		y of the mor described in	nth following the Delivery Period, as Article 3

This Confirmation is subject to the Appendices identified below and attached hereto:

Appendix A – Defined Terms

Appendix B – Product and Unit Information

Appendix C – Notice Information

Appendix D – Planned Outage Schedule

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

Direct Energy Business Marketing, LLC Silicon Valley Clean Energy Authority

Sign:

Sign:

Jay Robertson Print:

Girish Balachandran Print:

CEO Title: Sr. Director, West Power Trading Title:

ARTICLE 1 TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are described on page 1 of this Confirmation and in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Buyer with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Buyer with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Buyer that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2 DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each day of the Delivery Period, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for each day of the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and

- Product for Buyer, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable day of the Delivery Period, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Buyer for each day of the Delivery Period. The total amount of Product identified and confirmed for each day of the Delivery Period shall equal the Expected Contract Quantity.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Buyer with the specific information contemplated in Appendix B no later than the Notification Deadline for the Delivery Period.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any day of the Delivery Period, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Delivery Period.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any day of the Delivery Period during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any day of the Delivery Period in such amount as instructed by Buyer for the applicable day(s) of the Delivery Period. Seller shall not have failed to deliver the Expected Contract Quantity if Buyer fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO. To the extent, the Unit is not yet on the CPUC Net Qualifying Capacity list at the time the Supply Plan must be submitted, then the Product will be deemed delivered as a result of achieving the Commercial Operations for Markets date on June 2, 2023.

(g) The Shown Unit(s) must not have characteristics that would trigger the need for Buyer or Seller to file an advice letter or other request for authorization with the CPUC.

2.2 Adjustments to Contract Quantity

If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of the Delivery Period may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable days of such Planned Outages; provided, (i) Seller notifies Buyer by the Notification Deadline applicable to that day of the Delivery Period of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for each day of that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the Contract Quantity for any portion of a Delivery Period because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Delivery Period from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each day of each Delivery Period for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide a portion of the Contract Quantity for any day of a Delivery Period from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) for each day of the Delivery Period is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Buyer in writing of its intent to provide Alternate Capacity and shall identify the Replacement Unit(s) from which such Alternate Capacity shall be provided before the Notification Deadline for such Delivery Period; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, and Buyer has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Delivery Period. Buyer's approval of a Replacement Unit as to a given Delivery Period shall not be construed as approval of such Replacement Unit for any subsequent Delivery Period.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Buyer have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Delivery Periods for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may

provide Buyer with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Buyer's receipt of any such Seller proposed changes, Buyer shall notify Seller in writing of reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Buyer's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Buyer's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any day of the Delivery Period, Seller shall be liable for damages pursuant to Section 4.1 of the Master Agreement.
- (b) Seller shall indemnify, defend and hold harmless Buyer from any penalties, fines or costs, including Environmental Costs, assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

2.6 Buyer's Re-Sale of Product

- (a) Buyer may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6. For any such a resale, the Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. Seller shall, or shall cause the Shown Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller shall be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.
- (b) Buyer shall notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two (2) Business Days before the Notification Deadline for each Delivery Period for which Buyer has resold Product. Buyer shall notify Seller of

- any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Delivery Period.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity for re-sale into such market, and Seller and the Unit's SC shall comply with the Buyer's direction and Buyer shall retain and receive all revenues from such re-sale.
- (d) Buyer shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit's SC shall comply with the Buyer's direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Buyer shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Buyer, (i) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit's SC to not, accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.
- (e) Notwithstanding any provisions herein, Buyer shall not re-sell the Product outside the CAISO.

ARTICLE 3 PAYMENTS

3.1 Payment

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Buyer shall pay for the Product as provided in Article Six of the Master Agreement and this Confirmation. Buyer shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice or (ii) the twentieth (20th) day of the month after the Delivery Period; provided, however, if such day is not a Business Day then payment shall be made by the following Business Day ("RA Capacity Payment"). Each Unit's RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for the relevant day of the Delivery Period, (b) the Expected Contract Quantity for the day of the Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Delivery Period that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller shall receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or a Subsequent Buyer. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Buyer under the Master Agreement.
- (b) Buyer is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Buyer. Seller shall pay to Buyer within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.
- (c) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4 OTHER BUYER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period in compliance with the Tariff and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Buyer is not liable for, and Seller shall indemnify and hold Buyer harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Buyer's rights to the Expected Contract Quantity for the sole benefit of Buyer or any Subsequent Buyer, and (b) that Buyer may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation, cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested and supporting documentation to the CAISO, the CPUC, or any other Governmental Body

responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy RAR pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Buyer throughout the Delivery Period that:

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) The aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for the Shown Unit(s);
- (d) If applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Buyer; and
- (e) Seller has notified or will notify the Shown Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Buyer's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 5 AMENDMENTS TO THE MASTER AGREEMENT; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted at the end Section 5.2 of the Master Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Buyer or a Subsequent Buyer is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its calculation of the Settlement Amount, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties, fines or costs, Buyer must promptly remit to Seller the excess amount with interest in accordance with Section 6.2 of the Master Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

5.2 Confidentiality

Notwithstanding anything in the Master Agreement:

- (a) Buyer may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations;
- (b) Seller may disclose as necessary to a Shown Unit's SC or as necessary for submitting Supply Plans;
- (c) Each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and
- (d) Buyer may disclose information to any Subsequent Buyer.

5.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an "eligible contract participant" within the meaning of the United States Commodity Exchange Act §1a(18). Without limiting Section 10.10 of the Master Agreement, the Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions*

Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction results in any change in applicable law occurring after the Confirmation Effective Date that (i) materially changes Buyer's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the requirements for Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent of the Parties under this Confirmation. If the Change in Law results in the Product no longer being able to be counted towards Buyer's Resource Adequacy Requirements, and the Parties have not reached agreement within thirty (30) days after the initiation of discussions regarding the Change in Law on amendments that would allow the Product to be able to be counted towards Buyer's Resource Adequacy Requirements, Buyer may terminate this Confirmation upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

5.5 Governing Law

This Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the Master Agreement applicable to this Transaction shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

5.6 Credit and Collateral

Except as provided in the Master Agreement, neither Party shall be required to post collateral or other security for this Transaction.

5.7 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.8 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement to the contrary, this

Transaction may be confirmed only through a written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.

APPENDIX A DEFINED TERMS

"<u>Alternate Capacity</u>" means replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.

"CAISO" means the California ISO or the successor organization to the functions thereof.

"Capacity Attributes" means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Compliance Obligations" means, as applicable, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE's compliance with the Resource Adequacy Requirements of the CPUC for an applicable Delivery Period.

"Contingent Firm RA Product" has the meaning set forth in Article 1 herein.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to the Resource Adequacy Requirements.

"Delivery Period" means the period specified in Appendix B during which Seller shall deliver the Product to Buyer.

"Effective Flexible Capacity" has the meaning given in the CAISO Tariff.

"Environmental Costs" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product's compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

"Expected Contract Quantity" means, with respect to any particular day of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide as Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide as Alternate Capacity with respect to such day, less any reductions to Contract Quantity for such day consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

"Firm RA Product" has the meaning set forth in Article 1 herein.

"Flexible Capacity" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Local RAR" means the local Resource Adequacy Requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"LSE" means "Load Serving Entity" as such term is used in Section 40.9 of the Tariff.

"MW" means megawatt.

"Net Qualifying Capacity" has the meaning given in the CAISO Tariff.

"Notification Deadline" is five (5) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, or three (3) Business Days before the relevant deadlines for the corresponding Compliance Showings for the Delivery Period, if applicable.

"Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

"Product" means RAR, Local RAR and/or FCR for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications described on page 1 of this Confirmation and contained in Appendix B.

"<u>Prorated Percentage of Unit Factor</u>" means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Buyer under this Transaction.

"Prorated Percentage of Unit Flexible Factor" means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Buyer under this Transaction.

"Prudent Operating Practice" means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

"Replacement Unit" means a generating unit meeting the requirements specified in Section 2.3.

"Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"SC" means Scheduling Coordinator as defined in the Tariff.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

"Shown Unit" means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Effective Date.

"Subsequent Buyer" means the Buyer of Product from Buyer in a re-sale of Product by Buyer.

"<u>Tariff</u>" 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.

"<u>Unit</u>" means the generation unit described in Appendix B. A Unit may not be a nuclear or coalfired generating facility.

"<u>Unit EFC</u>" 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.

"<u>Unit NQC</u>" 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

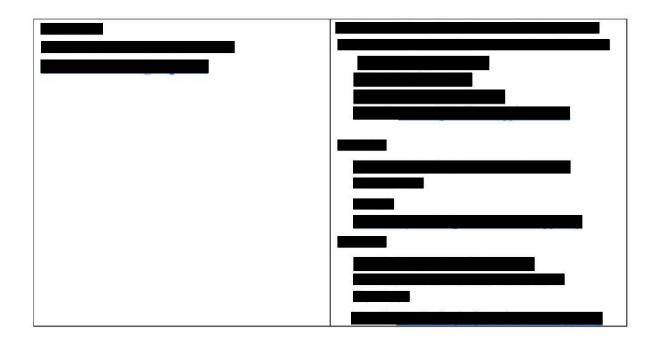
Product:		
⊠ RAR	☐ Local RAR	
and all Capacity Attrib	outes related to such Prod	uct.
Delivery Period:		
Contract Quantity ar	nd Contract Price:	

Unit Information

Name	Fifth Standard Battery
Location	Fresno County, CA
CAISO Resource ID	FIFTHS_2_FSSBT
Product Type (Flexible or Generic)	Generic
SCID of Resource	CEE1
Resource Type	Battery
Resource Category (1, 2, 3 or 4)	1
Point of Interconnection with the CAISO Controlled Grid ("Substation")	NA
Flexible RAR Category (1, 2 or 3)	2
Path 26 (North, South or None)	North
LAR Attributes (Yes or No)	No
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None
Flexible Capacity Category (Base/Peak/Super-peak)(as of the Confirmation Effective Date)	N/A

APPENDIX C NOTICE INFORMATION





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 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 June 1, 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.
- "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.

- 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

2.1 Period of Delivery

The "Period of Delivery" shall begin at the beginning of hour ending ("HE") 0100 on August 1, 2023 and continue until the end of HE 2400 on August 31, 2023.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

Seller shall transfer in the manner set forth in Section 3.3, to Buyer the Remaining Import Capability, as such term is defined by the Tariff (the "Product") in the Contract Quantity, for the Period of Delivery, and at the applicable Contract Price.

3.2 Delivery Point

Name	Bilateral Import Capability Transfer

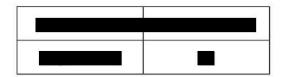
3.3 Performance

Within three (3) Business Days of the Confirmation Effective Date, Seller shall transfer to Buyer the Product in the amount of the Contract Quantity by registering the transfer with the CAISO as a Bilateral Import Transfer Capability as such terms is defined by the Tariff, and completing any other action of documentation required by the CAISO to effect such transfer, including registering such transfer in the CAISO Customer Interface for Resource Adequacy (CIRA) system. Upon Seller registering transfer with CAISO, Buyer shall immediately confirm the transfer with CAISO by e-mail or by confirming such transfer is registered in the CIRA system.

3.4 Contract Quantity

For the Period of Delivery, Seller shall transfer the Product in the total amount ("Contract Quantity"), as follows:

Contract Quantity Table



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:

Payment = (A X B X C)

where:

A= Contract Price (in \$/kW-month)

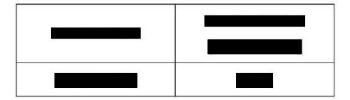
B= Contract Quantity (in MW) transferred by Seller

C= 1000kW/MW

The payment shall be rounded to two decimal places.

4.2 Contract Price

CONTRACT PRICE TABLE



5. 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

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]

Title:_

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, A California joint powers authority Direct Energy Business Marketing, LLC By: Girish Balachandran Jay Robertson Name: Name: CEO Sr. Director - West Power Trading

Title:_



Department of Energy

Bonneville Power Administration

Power Services

CONFIRMATION AGREEMENT

From: Bonneville Power Administration

PO Box 3621

Portland, OR 97208-3621

To: Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 290

Sunnyvale, CA 94087

BPA Preschedule: BPA Real Time:

BPA Contract: 23PM-16608 06/01/2023 Trade Date:

This confirmation agreement ("Confirmation Agreement") sets forth the terms of this transaction agreed to by the Bonneville Power Administration ("BPA") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") (each a "Party" and together the "Parties"). For the purposes of this Confirmation Agreement, the Enabling Agreement shall be deemed to include the Exhibit C-SS Specified Source Confirmation Attachment attached to this Confirmation Agreement. Transactions hereunder are in accordance with the Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services 22PM-16528 ("Enabling Agreement"). The definitions and provisions contained in the Enabling Agreement, in the RA Rules (as defined below), and in the tariffs and protocols of the California Independent System Operator ("CAISO"), as amended from time to time (the "Tariff"), shall apply to this Confirmation Agreement and are incorporated by reference; provided that, to the extent that any provision in this Confirmation Agreement is inconsistent with any provision of the Enabling Agreement, then the provision in this Confirmation Agreement shall govern the rights and obligations of the Parties hereunder.

Buyer:		Valley Clean Er	nergy	Seller:	BPA	
	Authori	ty (SVCE)		Trader:		
Trader:				Phone:		
Phone:						
Broker:	TUL			Holiday:	NERC	
Product:	Surplus	Firm (WSPP So	chedule C)	Point of Delivery:		
Product Descr	ription: BPA AC			Resource ID:		
	Categor			Deal Key:		
Start Date	End Date	Hourly	Energy Pri	ice Delivery	Contract	Revenue/
Start Date	End Date	Contract Quantity (MW)	\$/MWh	Hours	Quantity (MWh)	Cost
Start Date	End Date	Contract Quantity		•	Quantity	
Start Date	End Date	Contract Quantity		•	Quantity	
Start Date	End Date	Contract Quantity		•	Quantity	

All hours will be shown in Pacific Prevailing Time (PPT) defined as HE 0100- HE 2400

I. Product Provisions

1. **Definitions:**

"Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively).

"CPUC" means the California Public Utilities Commission.

"Delivery Hours" means every Monday through Saturday, 16 consecutive hours that include HE 1700 through HE 2100 (including NERC holidays).

"Delivery Point" means the Point of Delivery (POD),

"Delivery Term" means the period of time beginning on the Start Date and ending on the End Date.

"MCC Bucket(s)" means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031, as modified by CPUC Decision 21-06-029, pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031, as modified by CPUC Decision 21-06-029). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

"MCC Bucket Category 3" means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) every Monday through Saturday, for 16 consecutive hours that include HE 1700 through 2100 (4 pm through 9 pm).

"Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for Buyer by the CPUC pursuant to the RA Rules, or by any other governmental body having jurisdiction.

"RA Rules" means orders of the CPUC as contained in Decision ("D.") 04-01-050, D.04-10-035, D.05-10-042, D.06-04-40, D.06-06-064, D.06-07-031, D.06-12-037, D.07-06-029, D.08-06-031, D.09-06-028, D.10-06-036, D.10-12-038, D.11-06-022, D.11-10-003, D.12-06-025, D.13-06-024, D.14-06-050, D.15-06-063, D.16-06-045, D.19-10-021, D.20-06-028, and any other existing, subsequent, or modifying decisions, resolutions, orders or rulings issued by the CPUC from time to time in the Resource Adequacy phases of Rulemaking R.04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.11-10-023, R.14-02-001, R.14-10-001, R.17-09-020, R.19-11-009, R.21-10-002 or by any applicable successor proceeding.

"System Resource" means a group of resources generated by the BPA ACS System located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the Delivery Point. System Resource does not include any energy source with an e-tag from a busbar of a nuclear or coal-fired generating facility. However, the Parties understand that the ACS Emissions Factor (set forth below in Exhibit C-SS Specified Source Confirmation Attachment) takes into account some portion of nuclear and/or unspecified generation within BPA's System Resource.

Deal: Page 2 SVCE 23PM-16608 06/01/2023

2. **Product Requirements:**

- a. The Product cannot be curtailed by Seller or Buyer for economic reasons.
- b. Seller shall act as Buyer's CAISO scheduling coordinator (SC) to bid and deliver the Contract Quantity of Product to the CAISO and Buyer shall be entitled to all CAISO revenues associated with such deliveries (and if the CAISO LMP for the Delivery Point is negative during the Delivery Hours, Buyer shall be liable for any such payments), and all such amounts will be netted on Buyer's invoice. BPA shall receive no compensation for acting as scheduling coordinator under this Transaction. As Buyer's SC, BPA's bid will be consistent with the requirements of the RA Rules and any CAISO Tariff requirements.
- c. During the Delivery Term, Seller shall deliver the Product to Buyer in the amount of the Hourly Contract Quantity during each Delivery Hour into the CAISO on behalf of Buyer without substituting electricity from another source, as evidenced by e-Tags, or such other format acceptable to Buyer. Deliveries shall be measured for each hour that the Product is delivered to the CAISO but shall not exceed corresponding amounts shown on the e-Tags.
- d. Seller shall be the electricity importer into California for purposes of the Cap and Trade Regulations for the energy delivered pursuant to this Confirmation. The Parties acknowledge that BPA will be solely responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation, and will be responsible for any reporting requirements by an electricity importer (as defined in the Cap and Trade Regulations) for such energy under the Cap and Trade Regulations. For greater certainty, Seller is not assuming or performing on behalf of Buyer any reporting obligations Buyer may have under the Cap and Trade Regulations.
- e. BPA shall ensure the e-tag qualifies as energy with an ACS Emissions Factor and lists the following:
 - (i) ZES001 in the Carbon Copy Field of the tag.
 - (ii) "Silicon Valley Clean Energy" in the Comments Field of the tag.
 - (iii) Advanced notice to SVCE or its agent, f the e-tag is not required. If SVCE re-sells the ACS Energy, BPA will use the information provided from SVCE to populate the fields in 1) and 2) above with information identifying the subsequent purchaser.
- f. Seller shall self-schedule (or in the alternative, bid in at a level between negative \$ and into the CAISO day ahead and real-time markets for delivery during the Delivery Hours.
- g. Energy delivered pursuant to this Confirmation Agreement will not be sourced from resources internal to the CAISO Balancing Authority Area.
- h. The capacity supporting energy to be delivered pursuant to this Confirmation Agreement is surplus to the expected capacity requirements of the System Resource's host balancing authority area and is not committed to another balancing authority area (i.e., no double-counting).
- i. Throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Product from the System Resource to a third party or other balancing authority area.
- j. Throughout the Delivery Term, Product will be delivered to the Delivery Point using Firm Transmission.

- k. Throughout the Delivery Term, Seller's firm energy obligation is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the System Resource's host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its real-time obligations.
- 1. It is Buyer's sole responsibility to ensure it has obtained sufficient intertie import capability at the Delivery Point.
- m. Unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, BPA shall provide the full Contract Quantity to Buyer in compliance with the applicable provisions of the Tariff implementing the RA Rules, including, without reservation, the CPUC Final Decision 20-06-028, and section 40.6 of the CAISO's Tariff. Buyer shall have no liability for the failure of BPA to comply with such Tariff provisions, including any penalties or fines imposed on BPA by the CAISO for such noncompliance.

3. **Representations:**

- 3.1 BPA and Buyer represent and expressly agree that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's (or a subsequent purchaser's) right to the use of the Contract Quantity for the sole benefit of Buyer's RAR (or subsequent purchaser's RAR), consistent with the CAISO Tariff and RA Rules, including:
 - Meeting requirements established by the CAISO Tariff and RA Rules, including (1) demonstrating the ability to deliver the Contract Quantity over all Delivery Hours of the Delivery Term required for full RAR eligibility to Buyer, (2) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to "deliverability" standards established by the CPUC or other regional entity or entities responsible for RA administration, and (3) provision of a Supply Plan to the CAISO by BPA's Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by Buyer's (or subsequent purchaser's) Scheduling Coordinator (as such terms are defined in the CAISO Tariff);
 - Negotiating in good faith to make necessary amendments, if any, to this Confirmation Agreement mutually agreed upon to conform this Confirmation Agreement to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO or other regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain for each of the Parties; and
 - At all times using "Good Utility Practice" as defined in the CAISO Tariff.
- BPA represents that throughout the Delivery Term: 3.2
 - Seller holds the rights to the Product free and clear of all liens and encumbrances, and Seller agrees to convey and hereby conveys all such Product to Buyer free and clear of all liens and encumbrances as included in the delivery of the Product subject to the terms and conditions contained herein;
 - b. Buyer or subsequent purchaser has the exclusive right to count the Contract Quantity of Product from BPA's System Resource toward Buyer's RAR (or subsequent purchaser's RAR);

06/01/2023 Deal: Page 4 SVCE 23PM-16608

- The Delivery Point is firm and may not be modified without the consent of Buyer (i.e., the Delivery Point is not Seller's choice);
- The Hourly Contract Quantity of Product sold to Buyer hereunder has been sold once and only d. once by Seller and no portion of the Contract Quantity of Product has been committed or sold by BPA to any third party in order to satisfy its RAR or analogous capacity obligations in other markets or balancing authority areas;
- Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and RA Rules approved by the CPUC as they apply to the Product; and
- f. Title and reporting rights to the Product shall pass from Seller to Buyer at the Delivery Point.
- 4. **Indemnity Against Penalties and Replacement:** If BPA fails to fulfill its obligations under this Confirmation Agreement to provide the Product, and such failure is not excused under this Confirmation Agreement or the Enabling Agreement, in addition to any damages BPA would owe Buyer pursuant to Section 21.3 of the WSPP Agreement, then BPA agrees to indemnify Buyer for:
 - a. any monetary penalties assessed by the CPUC and/or the CAISO against Buyer for Buyer's failure to meet the requirements of the RA Rules or Tariff as a result of BPA not fulfilling any of its obligations under this Confirmation Agreement. Such failure may be excused to the extent BPA provides Buyer with sufficient notice to take action necessary to avoid such monetary penalties being assessed.
 - b. if BPA fails to bid the Product into the CAISO day-ahead and real-time markets in accordance with this Confirmation Agreement, BPA will refund to Buyer any payments made by Buyer for Product that is not bid according to this Confirmation Agreement, provided these payments are not already included in the damages calculated pursuant to Section 21.3 of the WSPP Agreement.

Notwithstanding the foregoing, if approved by the CPUC and/or the CAISO, BPA may replace any Product necessary for Buyer to make its equivalent RA demonstration with another System Resource.

5. **Resale of Product:**

- a. Buyer may re-sell all or a portion of the Contract Quantity and any associated rights, in each case, acquired under this transaction. In the event Buyer re-sells all or a portion of the Contract Quantity of Product and any associated rights acquired under this transaction ("Resold Product") BPA agrees to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product. With respect to any Resold Product, BPA continues to be liable to Buyer for any damages due to the failure of BPA to comply with the terms of this transaction; However, Buyer represents and warrants that BPA shall have no contractual obligation or liability to any subsequent purchaser.
- b. BPA's obligations under this Section 5 are contingent on Buyer 1) providing BPA with the information required by this Section 5 no later than two (2) Business Days prior to the deadline for filing the Supply Plan for the Resold Product; 2) any requested assignment being consistent with federal law applicable to BPA. Further, any resale of Product by Buyer to a subsequent purchaser must be permitted under the Tariff, CAISO business practices and applicable federal law, and BPA shall not be required to take any

06/01/2023 Deal: Page 5 SVCE 23PM-16608

- action hereunder or execute any documents or instruments that would not be permitted under the Tariff, CAISO business practices or applicable federal law.
- c. In the event there is any Resold Product, Buyer agrees to immediately notify BPA of such sale and agrees to provide BPA with all the information specified below promptly following such sale (and any other information reasonably requested by BPA so that BPA may perform its obligations in this Section 5) and promptly notify BPA of any subsequent changes to such information with respect to any particular sale:
 - Benefitting load serving entity SC identification number,
 - ii. Volume (in MW) of Resold Product,
 - iii. Sale delivery period for Resold Product.

II. **Additional Provisions**

- 1. Confidentiality: Each Party recognizes that this Confirmation Agreement is subject to the requirements of the California Public Records Act (California Government Code § 7920 et seg.). Section 30.1(4) of the WSPP Agreement is amended by (a) inserting "or requested" after the word "required" and (b) "or compliance filings" after both instances of "proceedings". Notwithstanding the Enabling Agreement, the Parties agree that Buyer, and any subsequent purchaser, may disclose this Confirmation Agreement to the CPUC, the CAISO or any other governmental body having jurisdiction in order to support its RAR showings.
- 2. Entire Agreement, No Oral Agreements or Modifications: This Confirmation Agreement sets forth the terms of this transaction and, along with the Enabling Agreement, shall constitute the entire agreement between the Parties for the purchase and sale of the Product. Notwithstanding any other provision of the Enabling Agreement, this transaction may be confirmed only by a Documentary Writing executed by both Parties, and no amendment or modification to this transaction shall be enforceable except under a Documentary Writing executed by both Parties.
- 3. Joint Powers Authority: Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code § 6500 et seq.) and is a local agency separate from its constituent members. Buyer will be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation Agreement. BPA agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members, any cities or counties participating in Buyer's community choice aggregation program, or any of Buyer's retail customers in connection with the Transaction to which this Confirmation applies.
- 4. **Counterparts:** This Confirmation Agreement may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Confirmation Agreement by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
- 5. Surplus Power Use Outside Pacific Northwest: BPA has determined it has surplus power available in the amount marketed for the term of this Confirmation Agreement. All sales of surplus power for use outside the Pacific Northwest under this Confirmation Agreement are subject to the provisions of Public Law 88-552 and Section 9(c) of Public Law 96-501. BPA shall have the right to curtail a portion of, or terminate all of:

06/01/2023 Deal: Page 6 SVCE 23PM-16608

- (a) the capacity associated with a surplus firm peaking capacity sale on 60 months' written notice; or (b) the energy associated with a surplus energy sale on a 60-day written notice specifying the amounts and duration of the curtailment or termination, if such capacity and/or energy is needed to meet the capacity and/or energy requirements in the Pacific Northwest. Such curtailments to Buyer shall be limited to the amounts and duration necessary to cover BPA's projected Pacific Northwest needs. The sale of capacity and/or energy to Buyer under this Confirmation Agreement shall continue in months during which such capacity and/or energy is not needed, as determined by BPA, in the Pacific Northwest.
- 6. **BPA Specified Asset Controlling Supplier (ACS) Provisions:** The Parties agree this is a confirmation for the delivery of energy with a BPA Specified ACS Emissions Factor sourced from "BPAPOWER" on a NERC e-tag.

We are pleased to enter into this transaction	n. Please sign and return an e	xecuted copy of this C	Confirmation
via fax to			

AGREED AND ACCEPTED

Bonneville Power Administration

MARK MILLER Digitally signed by MARK MILLER Date: 2023.06.14 14:30:16 -07'00'

Print Name: Mark E. Miller
Title: Account Executive
Date: 6/14/23

Silicon Valley Clean Energy Authority

Girish Balachandran

Print Name: Print Name:

Title CEO

Date: 6/14/2023

EXHIBIT C-SS SPECIFIED SOURCE CONFIRMATION ATTACHMENT

a. Identity of Source:
The following (i) facility, generator, unit or (ii) ACS system ("Source"): ACS System
Source CARB IDs, if applicable and available: ARB ID #4000
California Energy Commission RPS ID, if Source is an ERR: N/A
WREGIS ID#, if applicable: N/A
b. Source EF _{sp} :
https://ww2.arb.ca.gov/mrr-acs
c. Carbon Adjustment (rapid settlement if Seller delivers higher emissions factor energy than agreed): Carbon Adjustment applies unless the following box is checked:
Carbon Adjustment does not apply and instead of Carbon Adjustment, Seller shall compensate Purchaser as follows, in addition to Purchaser's remedies in Section 21 of the WSPP Agreement, if Seller fails to schedule and deliver energy from the Source unless excused pursuant to the terms of the applicable Schedule or this Confirmation:
[e.g., fixed damages of \$0, \$2, or % of Carbon Adjustment.]
d. EF True-Up (full indemnity for difference between agreed and CARB-assigned emissions factors, settled after verification): EF True-Up does not apply unless one or more of the following boxes that are checked cause a change to EF _{sp} or EF _{asn} :
Change in generator operations or fuel source. Prospective or retroactive change in law (including AB32). Other, as follows: All other circumstances.
EF True Up damages are limited as follows: [e.g., caps]
e. RECs Disclosure (not applicable for an ACS system Source): Seller represents and warrants that the Source is not an ERR, unless the box is checked below. This is a disclosure, not an option, and failure to check this box does not excuse performance if the Source is or becomes an ERR.
The Source is an ERR, and Section 6.c therefore applies.
f. Regulation Incorporation: This transaction is <u>not</u> Regulation Incorporation <u>unless</u> the following box is checked:
This transaction is Regulation Incorporation and Section 6.e applies.
g. Additional provisions:

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, or MTR Attributes of the Unit(s) which, if applicable, shall all be retained by the Seller.

Delivery Period:

<u>Contract Quantity and Contract Price:</u> 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(s) other than the Shown Unit(s) 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. If applicable, the Alternate Units shall have Flexible Capacity Categories and Maximum Cumulative Capacity Categories (MCC Buckets) that are reasonably acceptable to Buyer, if different than those listed in Appendix B.

- (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 <u>Delivery of Product</u>

- (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 <u>Damages for Failure to Provide Capacity</u>

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 <u>Indemnities for Failure to Deliver Contract Quantity</u>

- (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

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. Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v)).
- (c) 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.
- (d) 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.
- (e) 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 <u>Current Mark-to-Market Value</u>

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:	Girish Balachandran	By:	Folina Ying
Name:	Girish Balachandran	Name:	Polina Ying
Title:	CEO	Title:	Portfolio Management Analyst, Expert
Date:	6/14/2023	Date:	6/15/2023
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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.
- "Maximum Cumulative Capacity Category", also referred to as "MCC Bucket," has the meaning set forth in the most recently published edition of the CPUC Filing Guide as of the Confirmation Effective Date.
- "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.
- "MTR Attributes" means, with respect to a generating unit, the accounting, tagging, filing, or other reporting constructs associated with the generating unit that can be counted towards demonstrating compliance with an LSEs obligation to procure incremental resources as described in Ordering Paragraph 1 of CPUC Decision 21-06-035.

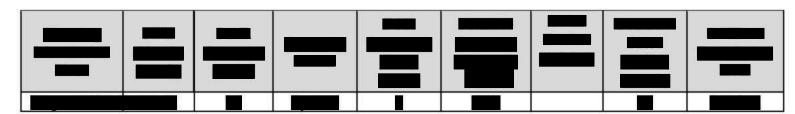
- "MW" means megawatt.
- "Path" refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E's TAC) and South of Path 26 (SCE and SDG&E's TACs), as identified by the Commission in D.07-06-029.
- "Planned Outage" means any outage that was submitted to the CAISO 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.
- "<u>Tariff</u>" 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.
- "<u>Unit</u>" means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

"<u>Unit EFC</u>" 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.

"<u>Unit NQC</u>" 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



PG&E Resource Adequacy (Log No. 33B230V03) EEI Monthly Firm RA Confirm AND Owen Milligan (owen milligan@svcleanenergy.org) Phone: (714)-280-3137

APPENDIX E <u>FORM OF LETTER OF CREDIT</u> **Issuing Bank Letterhead and Address**

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [Insert issue date]

Beneficiary: [Insert Beneficiary name] **Applicant:** [Insert Applicant name]

[Insert Beneficiary address] [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,

[Print or type name]
[Print or type title]

EXHIBIT A SIGHT DRAFT

TO: [INSERT NAME AND ADDRESS OF]	PAYING BANK]
AMOUNT: \$	DATE:
	O THE ORDER OF PACIFIC GAS AND ELECTRIC (U.S. DOLLARS)
DRAWN UNDER [INSERT NAME OF [XXXXXX].	'ISSUING BANK] LETTER OF CREDIT NO.
REMIT FUNDS AS FOLLOWS:	
[INSERT PAYMENT INSTRUCTION	[S]
	DRAWER:
	By: Drint or type namel
	Name: [Print or type name] Title: [Print or type title]

MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER

BETWEEN

SILICON VALLEY CLEAN ENERGY AUTHORITY AND

SOUTHERN CALIFORNIA EDISON COMPANY

This confirmation letter including all appendices hereto ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority ("Counterparty") and Southern California Edison Company ("SCE"), each individually a "Party" and together the "Parties", dated as of 6/15/2023 (the "Confirmation Effective Date") in which the "Parties", dated as of _ (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute ("EEI") Master Power Purchase and Sale Agreement between the Parties, effective as of February 7, 2018, along with the Cover Sheet, any amendments and annexes thereto (the "Master Agreement"), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are referred to collectively herein as the "Collateral Annex") (the Master Agreement and the Collateral Annex shall be collectively referred to as the "EEI Agreement"). The EEI Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

ARTICLE 1. TRANSACTION TERMS

1.1 Product; Elections

Product: The product, including the Capacity Attributes of the

Unit(s), as defined in Appendix C, or Alternate Unit(s)

provided in accordance with Section 2.3.

Flexible Capacity: The Product shall include Flexible Capacity if identified in

Appendix B as applicable.

1.2 Delivery and Receipt of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller the Product in the amount of the applicable Contract Quantity for each month of the Delivery Period.

1.3 Delivery Period and Term

- (a) <u>Delivery Period</u>. The Delivery Period is as specified in Appendix B of this Confirmation in the row titled "Delivery Period", unless terminated earlier in accordance with the terms of this Agreement.
- (b) <u>Term</u>. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.4 Contract Quantity

The Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled "Contract Quantity."

1.5 Flexible Capacity

If the Parties have designated Flexible Capacity as "Applicable", then the Flexible Capacity included in the Contract Quantity for each applicable Showing Month is as shown in Appendix B of this Confirmation under the heading titled "Flexible Capacity."

1.6 Contract Price

The Contract Price means, for any Showing Month, the price specified in Appendix B of this Confirmation under the heading titled "Contract Price," for such Showing Month.

ARTICLE 2. DELIVERY OBLIGATIONS

2.1 Seller's Delivery Obligations

Seller shall provide Buyer with the Expected Contract Quantity of Product for each Showing Month consistent with the following:

(a) <u>Supply Plan Obligation</u>. Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months as specified in Sections 1.4 and 1.5 herein, in accordance with the CAISO Tariff 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 Buyer for each Showing Month (the "Supply Plan Obligation").

- (b) Showing Month Notice. If (i) Seller intends to utilize an Alternate Unit in accordance with Section 2.3 to satisfy its Supply Plan Obligation, or (ii) Seller intends to deliver less than the Contract Quantity of Product for such Showing Month for any reason, then Seller shall, or shall cause the Unit's SC to, submit written notification to Buyer (the "Showing Month Notice"), no later than the Compliance Notification Deadline, identifying either or both of the Alternate Units in accordance with Section 2.3 and the Expected Contract Quantity of Product if such amount is less than the Contract Quantity of Product, as applicable.
- (c) <u>Contract Quantity Unit Allocation</u>. If Seller is delivering Product to Buyer from more than one Unit, Seller shall deliver such Product to Buyer from each Unit in accordance with the Contract Quantity Unit Allocation, as set forth in Appendix C; provided, Seller may modify the Contract Quantity Unit Allocation from time to time by providing email notice to Buyer's Supply Plan contact, as set forth in Appendix D, no later than the initial Compliance Showing Deadline for each Showing Month.

2.2 Adjustments to Contract Quantity

Seller shall deliver to Buyer the Contract Quantity of Product for each Showing Month consistent with the following:

- (a) <u>Planned Outages</u>: 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 if the following conditions are satisfied:
 - (i) Seller notifies Buyer no later than the Compliance Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's Compliance Showings applicable to that month as a result of such Planned Outage; and
 - (ii) such reduction to the Contract Quantity of Product can be reflected on Supply Plans in accordance with the CAISO Tariff.
- (b) Reductions in Unit NQC and Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Confirmation Effective Date as determined by the CAISO. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Alternate Units, provided, that in each case Seller provides and identifies such Alternate Units in accordance with Section 2.3.

(c) Reductions in Seller Supply Agreement: Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may also be reduced in the event that the underlying Seller supply agreement results in Seller's inability to deliver the Product to Buyer in accordance with this Agreement. Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from Alternate Units, provided, that in each case Seller provides and identifies such Alternate Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

Seller may, at no cost to Buyer, provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Buyer no later than the Compliance Notification Deadline for such Showing Month of its intent to provide Product from and identify alternate units that (i) are like-for-like units similar to the Unit originally identified in Appendix C and have the same Capacity Attributes of the Unit originally identified in Appendix C, including the Resource Category and the Unit EFC Category; (ii) are accepted by the CAISO, and (iii) otherwise that satisfy the requirements of this Agreement ("Alternate Units");
- (b) Seller shall, or shall cause the Unit's SC to submit a Monthly Supply Plan and an Annual Supply Plan, as applicable, that includes the Alternate Units, in accordance with Section 2.1(a) hereof for such Showing Month;
- (c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month, then any such Alternate Units shall not be deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) - (c) of this Section 2.3, once Seller has identified in writing any Alternate Units that meet the requirements of this Section 2.3, then any such Alternate Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

2.4 Damages for Failure to Provide Capacity

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any Showing Month, in accordance with Section 2.1 (the "Replacement Obligation"), in each case as applicable, then the following shall apply:

(a) Buyer may, but shall not be required to, replace all or any portion of the Replacement Obligation for the applicable Showing Month with capacity having equivalent Capacity Attributes as the Expected Contract Quantity;

provided, if, using commercially reasonable efforts, Buyer is unable to acquire capacity having equivalent Capacity Attributes for any portion of any Showing Month, Buyer may replace such portion of the Replacement Obligation with capacity having Capacity Attributes in excess of the Contract Quantity (the "Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to purchase Replacement Capacity. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner to minimize damages in procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, including any transaction costs and expenses incurred in connection with such procurement, plus (B) each applicable Replacement Capacity Price multiplied by the aggregate amount of Replacement Obligation neither provided by Seller as Alternate Capacity nor purchased by Buyer as Replacement Capacity, for all applicable portions of the applicable Showing Month pursuant to Section 2.4(a), and (ii) the Replacement Obligation minus the Alternate Capacity, not provided for all applicable portions of the applicable Showing Month times the Contract Price for that month. Buyer's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and shall include supporting documentation.

2.5 Indemnities for Failure to Deliver Expected Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines, or costs assessed against Buyer by the CPUC or the CAISO, resulting from all or any of the following:

- (a) Seller's failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;
- (b) Seller's failure to provide a Showing Month Notice for any portion of the Delivery Period;
- (c) Seller's or the Unit's SC's failure to timely or accurately submit, or otherwise satisfy its Supply Plan Obligation for any portion of the Expected Contract Quantity or any portion of the Delivery Period; or
- (d) any other failure by Seller to perform its obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines, and costs.

2.6 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation, in accordance with Applicable Laws and CPUC Decisions ("Resold Product"); provided, with respect to Resold Product that includes the sale of Capacity Attributes that impact Seller's obligations under this Confirmation, Buyer agrees to: (a) notify Seller that such a sale has occurred; (b) provide Seller with the information described in Appendix E; and (c) notify Seller of any subsequent changes to the information in Appendix E with respect to any particular sale; in each case promptly following such sale and in no event later than the initial Compliance Showing Deadline for each Showing Month. Subject to Article 6 below, Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product; and (ii) take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product.

Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 2.4 and 2.5, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser. Buyer acknowledges and agrees that with respect to any Resold Product, if Seller incurs any liability to any purchaser of such Resold Product due to the failure of Buyer to comply with the terms of this Confirmation, and Buyer would have had liability to Seller under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Buyer shall be liable to Seller under this Confirmation for the amounts it would have been liable to Seller for had such Resold Product not been sold to a subsequent purchaser.

2.7 CAISO Offer Requirements

Seller shall, or cause each Unit's SC to, schedule with, or make available to, the CAISO the Expected Contract Quantity for each Unit in compliance with the CAISO Tariff, and shall, or shall cause each Unit's SC, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

2.8 Unit SC's Substitution Obligation

After the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit's SC for a Showing Month in accordance with the CAISO Tariff, and if the CAISO determines that any portion of the Expected Contract Quantity for any portion of a Showing Month that was shown by Buyer in its Compliance Showings requires outage substitution in accordance with Section 40.9.3.6 of the CAISO Tariff because the Unit, or Alternate Unit, as applicable, is scheduled to take an outage (planned or otherwise) (such amount requiring outage substitution, the "SC Substitute Capacity"), then: (a) Seller shall have no liability under Sections 2.4 or 2.5 with respect to such SC Substitute Capacity; and (b) Seller shall have no liability to Buyer for any costs that are allocated to Buyer by the CAISO for any CPM Capacity procured by the CAISO pursuant to the Capacity Procurement Mechanism and that are related to such SC Substitute Capacity.

ARTICLE 3. PAYMENT

3.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly Payment to Seller, after the applicable Showing Month, as follows:

Monthly Payment = $(A \times B \times 1,000)$

where:

A =applicable Contract Price for that Showing Month.

B = The amount of Contract Quantity of Product actually delivered by Seller to Buyer pursuant to and consistent with Section 2.1 and, if applicable, Section 2.3, for the applicable Showing Month.

The Monthly Payment calculation shall be rounded to two decimal places.

3.2 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) energy sales, (iii) ancillary services, and (iv) black start or reactive power services.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism or its successor, RUC Availability Payments, or its successor, but excluding payments described in Sections 3.2(a)(i)-(iv)). To the extent permitted by the CAISO Tariff, Seller

shall, or shall cause each Unit's SC to, submit RUC Availability Bids for the Expected Contract Quantity for each Unit for each hour of the Delivery Period at a bid price of Zero Dollars (\$0) per MW per hour, regardless of whether each Unit is shown on a Supply Plan for the applicable Showing Month.

- (c) In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,
 - (iii) all such Buyer revenues described in this Section 3.2, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity; and
 - (iv) all such Seller, or a Unit's SC, owner, or operator revenues described in this Section 3.2, but received by Buyer shall be remitted to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each Showing Month provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

3.3 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party.

ARTICLE 4. OTHER BUYER AND SELLER COVENANTS

4.1 <u>Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product</u>

Buyer and Seller shall, throughout the Delivery Period: (a) cause the Benefiting Load Serving Entity SCID to be included in all applicable Supply Plans; (b) execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Section 2.6; and (c) cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. If during the Delivery Period, there is a change to the Benefiting Load Serving Entity SCID, the Parties agree to communicate such changes to each other promptly. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Authority having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

4.2 <u>Seller's Representations, Warranties and Covenants</u>

- (a) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:
 - (i) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
 - (ii) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
 - (iii) Seller shall comply with Applicable Laws relating to the Product;
 - (iv) (A) Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Contract Quantity as CPM Capacity and (B) in the event the CAISO makes such a designation Seller shall, and shall cause the Unit's SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation;
 - (v) Buyer shall have the exclusive right to offer the Contract Quantity, or

any portion thereof, to the CAISO as CPM Capacity and Seller shall not, and shall cause the Unit's SC not to, offer any portion of the Contract Quantity to the CAISO as CPM Capacity or accept any designation of any portion thereof as CPM Capacity;

- (vi) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (vii) Seller shall cause the Unit's SC, owner and operator to comply with Applicable Laws relating to the Product;
- (viii) Buyer shall have no liability for the failure of Seller or the failure of the Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.
- (ix) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit does not exceed the Unit NQC or Unit EFC for that Unit;
- (x) Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, with respect to each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff and this Confirmation;
- (xi) Seller has notified the SC of the Unit that Seller is obligated to cause the Unit's SC to provide to the Buyer, on or prior to the Compliance Notification Deadline, the applicable Expected Contract Quantity of the Unit for such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (xii) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
- (b) Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, all of the information set forth on Appendix C hereto is true, correct and complete.

ARTICLE 5. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that: (i) Buyer may disclose the Contract Quantity or any applicable portion of the Contract Quantity,

including any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable, under this Transaction to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable; (ii) Seller may disclose the transfer of the Contract Quantity and the applicable Expected Contract Quantity (as well as any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable) for each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; (iii) both Parties may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the Independent Evaluator; and (iv) Buyer and the Independent Evaluator may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the California Energy Commission, and participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

ARTICLE 6. HOLDBACK

No later than five (5) Business Days before the deadline for the initial Compliance Showing Deadline with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Unit's SC not to list, a portion or all of a Unit's applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 2.1 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.4 or 2.5. Seller shall, or shall cause the Unit's SC to, comply with Buyer's request under this Article 6.

ARTICLE 7. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with FERC Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42. Seller also agrees that it will not, in any filings, if any, made subject to FERC Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 8. COLLATERAL REQUIREMENTS

8.1 Counterparty Collateral Requirements

Notwithstanding anything to the contrary contained in the EEI Agreement, Counterparty shall have a Full Floating Independent Amount if Counterparty or its Guarantor, if any, does not maintain Credit Ratings of at least (a) BBB- from S&P and Baa3 from Moody's, if such entity is rated by the Ratings Agencies, or (b) BBB- by S&P or Baa3 by Moody's if such entity is rated by only one Ratings Agency. The Full Floating Independent Amount shall equal the value set forth in Appendix B of this Confirmation. Commencing after the initial Compliance Showing Deadline of the first Showing Month of the Delivery Period, and for each initial Compliance Showing Deadline during the Delivery Period thereafter, the Full Floating Independent Amount shall be reduced to twenty percent (20%) of the sum of the FFIA Monthly Payments for the Next Showing Month and all remaining months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Full Floating Independent Amount for Counterparty shall be added to the Exposure Amount for SCE and subtracted from the Exposure Amount for Counterparty.

For the purposes of calculating Exposure, the Monthly Payment shall be deemed accrued and payable upon the initial Compliance Showing Deadline for the applicable Showing Month.

8.2 Current Mark-To-Market Value

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for a resource adequacy Capacity product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction.

8.3 Credit Terms

The Parties agree that the credit and collateral provisions of the EEI Agreement shall govern this Transaction; provided, however, that for purposes of calculating a Party's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, with respect to this Transaction only (a) if Counterparty has Exposure to SCE, then the amount of Exposure for this Transaction is deemed to be zero dollars (\$0), and (b) in no event shall SCE be required to post or maintain an Independent Amount with Counterparty.

ARTICLE 9. OTHER

9.1 <u>Declaration of an Early Termination Date and Calculation of Settlement</u> Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement, provided that, with respect to this Transaction only, the following language is added at the end of Section 5.2 of the Master Agreement, with any terms which are defined in this Confirmation being used in the Master Agreement with the definitions given to such terms in this Confirmation:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any Governmental Authority having jurisdiction, because Buyer is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties or fines, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

9.2 No Waiver

The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default. Waiver by either Party of any failure to comply with any timeline or deadline by the other Party as provided herein in any instance, shall not be deemed a waiver of any failure to comply with such timeline or deadline in the future, or otherwise establish a course of performance.

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In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date first written:

SILICON VALLEY CLEAN ENERGY AUTHORITY,

a California joint powers authority.

By: Girish Baladian dran

Name: Girish Balachandran

Title: Chief Executive Officer

Date: 6/13/2023

SOUTHERN CALIFORNIA EDISON COMPANY,

a California corporation.

By: Constartine Louis

Name: Constantine Louie

Title: Senior Manager, Energy Trading

Date: 6/15/2023

APPENDIX A DEFINED TERMS

- "Agreement" has the meaning specified in the introductory paragraph of this Confirmation.
- "<u>Alternate Capacity</u>" means Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.
- "Alternate Unit" means a generating unit meeting the requirements specified in Section 2.3.
- "Annual Supply Plan" has the meaning set forth in the CAISO Tariff.
- "Applicable Laws" means the CAISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project, the Unit or the terms of this Agreement.
- "Availability Incentive Payments" has the meaning set forth in the CAISO Tariff.
- "Availability Standards" has the meaning set forth in the CAISO Tariff.
- "Benefiting Load Serving Entity SCID" is as specified in Appendix D.
- "Buyer" has the meaning specified in Appendix B.
- "CAISO" means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- "CAISO Control Area" has the meaning set forth in the CAISO Tariff.
- "CAISO Controlled Grid" has the meaning as set forth in the CAISO Tariff.
- "CAISO Tariff" means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.
- "Capacity Attributes" means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:
 - (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;

- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligation;

provided that, notwithstanding the foregoing, Capacity Attributes shall exclude all flexible capacity resource adequacy attributes, characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled associated with the Unit; provided further, notwithstanding the foregoing, Capacity Attributes shall exclude intra-month substitution resource adequacy attributes.

"Capacity Procurement Mechanism" has the meaning set forth in the CAISO Tariff.

"Collateral Annex" has the meaning specified in the introductory paragraph of this Confirmation.

"Compliance Notification Deadline" means, for each Showing Month, fifteen (15) Business Days before the Compliance Showing Deadline.

"Compliance Obligations" means the RAR and Local RAR.

"Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings) and (b) RAR compliance or advisory showings (or similar or successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"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 Confirmation 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 Term.

"Confirmation" has the meaning specified in the introductory paragraph of this Confirmation.

"Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

"Contract Price" means, for any Showing Month, the price specified in Appendix B under the column titled "Contract Price" for such Showing Month.

"Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled "Contract Quantity", which Seller has agreed to provide to Buyer from the Unit for each Showing Month.

"Contract Quantity Unit Allocation" means, if Seller is delivering Product to Buyer from more than one Unit, the allocation of Contract Quantity Seller will deliver from each Unit, as set forth in Appendix C and as modified by Seller from time to time in accordance with Section 2.1(c).

"Cover Sheet" has the meaning specified in the introductory paragraph of this Confirmation.

"CPM Capacity" has the meaning set forth in the CAISO Tariff.

"CPUC" means the California Public Utilities Commission.

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

"CPUC Filing Guide" is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"Current Mark-to-Market Value" has the meaning specified in Section 8.2

"Delivery Period" has the meaning specified in Section 1.3(a).

"EEI" has the meaning specified in the introductory paragraph of this Confirmation.

"<u>EEI Agreement</u>" has the meaning specified in the introductory paragraph of this Confirmation.

"Expected Contract Quantity" means, with respect to any Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and after giving effect to any reductions to Contract Quantity as specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

"FFIA Monthly Payment" shall be the Monthly Payment calculated using the Contract Quantity rather than the Expected Contract Quantity, such that variable B in the formula

for Monthly Payment shall be as follows: B =the Contract Quantity of Product for each applicable Showing Month.

"Governmental Authority" means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

"Independent Evaluator" has the meaning set forth in CPUC Decision 04-12-048.

"Local Capacity Area" has the meaning set forth in the CAISO Tariff.

"Local RAR" means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

"Maintenance Outage" has the meaning set forth in the CAISO Tariff.

"Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Monthly Payment" has the meaning specified in Section 3.1.

"Monthly Supply Plan" has the meaning set forth in the CAISO Tariff.

"MW" means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

"Net Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

"Next Showing Month" means the next calendar month for which a Compliance Showing will be made.

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

"Planned Outage" means a maintenance outage taken by the Unit originally identified in Appendix C, as such maintenance outage is determined by the applicable Unit or Unit SC.

"Product" means the Capacity Attributes of the Unit(s), including any capacity from RMR Contracts for the applicable Unit, or its successor, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor; provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and
- (c) the Parties agree that, under this Confirmation, if the CAISO", CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.
- "RAR" means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.
- "Replacement Capacity" has the meaning specified in Section 2.4.
- "Replacement Capacity Price" means the market price for Product with Capacity Attributes reasonably equivalent to the quantity of Product not provided by Seller under this Confirmation, as determined in the manner upon which market prices are determined under Section 5.2(b) of the Master Agreement. For purposes of this Transaction and Confirmation, the "Replacement Capacity Price" shall be deemed to be the "Replacement Price" as defined in Section 1.51 of the Master Agreement.
- "Replacement Obligation" has the meaning specified in Section 2.4.
- "Resold Product" has the meaning specified in Section 2.6.
- "Resource Category" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- "RMR Contracts" has the meaning set forth in the CAISO Tariff.
- "RUC Availability Bid" has the meaning set forth in the CAISO Tariff.
- "RUC Availability Payment" has the meaning set forth in the CAISO Tariff.
- "SC" has the meaning set forth in the CAISO Tariff.
- "SC Substitute Capacity" has the meaning set forth in Section 2.8.
- "Seller" has the meaning specified in Appendix B.

"Showing Month" shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"Showing Month Notice" has the meaning specified in Section 2.1(b).

"Supply Plan" has the meaning set forth in the CAISO Tariff.

"Supply Plan Obligation" has the meaning specified in Section 2.1(a).

"Term" has the meaning specified in Section 1.3(b).

"<u>Unit</u>" shall mean the generation assets described in Appendix C (including any Alternate Units), from which Product is provided by Seller to Buyer.

"<u>Unit NQC</u>" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ADDITIONAL DEFINED TERMS

To the extent that the Parties have selected Flexible Capacity as being "Applicable", the following definitions shall be utilized in lieu of the corresponding definition, where appropriate, or in addition to the definitions set forth in the above Defined Terms:

"Capacity Attributes" means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
- (b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR;
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligations; and
- (d) flexible capacity resource adequacy attributes for the Unit, including, without limitation, the amount of Unit EFC and MWs associated with Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR;

provided, notwithstanding the foregoing, Capacity Attributes shall exclude intramonth substitution resource adequacy attributes.

"Compliance Obligations" means the RAR, Local RAR and Flexible RAR.

"Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product associated with the number of MWs set forth in Appendix B under the column titled "Contract Quantity", which Seller has agreed to provide to Buyer from the Unit for each Showing Month, and which includes

Product which is Flexible Capacity in an amount equal to the amount identified in Appendix B. All Contract Quantity is Inflexible Capacity except to the extent identified as Flexible Capacity Appendix C.

"Effective Flexible Capacity" has the meaning set forth in the CAISO Tariff.

"Flexible Capacity" means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled "Flexible Capacity" which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are eligible to satisfy a load serving entity's Flexible RAR and which such MWs of Product are associated with MWs of the Unit that are part of the Unit EFC.

"Flexible RAR" means the flexible capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction and includes any non-binding advisory showings which a load serving entity is to make with respect to flexible capacity.

"Inflexible Capacity" means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product set forth in Appendix B under the column titled "Contract Quantity", minus the number of MWs of Product set forth in Appendix B under the column titled "Flexible Capacity", which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MWs of Product are not eligible to satisfy a load serving entity's Flexible RAR and which are Product associated MWs of the Unit that are not part of or outside the Unit EFC. Inflexible Capacity is also known as 'generic capacity'.

"Product" means the Capacity Attributes of the Unit, provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR

- provided hereunder will not result in a change in payments made pursuant to this Transaction;
- (d) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area; and
- (e) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR whereby the Unit, or a portion of the Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of the Unit related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Unit which previously was not able to satisfy Flexible RAR.

"<u>Unit EFC</u>" means the Effective Flexible Capacity (in MWs) of the Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

"<u>Unit EFC Category</u>" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

APPENDIX B FLEXIBLE CAPACITY, DELIVERY PERIOD, CONTRACT QUANTITY, CONTRACT PRICE, AND FULL FLOATING INDEPENDENT AMOUNT

The quantities specified in this table will control in the event of a conflict between these values and those in Appendix C. The Parties agree to revise the Appendix C as necessary to ensure that the Contract Quantity and Flexible Capacity are satisfied in full.

Buyer	Silicon Valley Clean Energy Authority		
Seller	Southern California Edison Company		
Flexible Capacity	☐ Applicable ☑ Not applicable		
Delivery Period			
S			

APPENDIX C UNIT INFORMATION AND CONTRACT QUANTITY UNIT ALLOCATION

Unit 1 Information

Unit	1
CAISO Resource ID	BUCKBL_2_PL1X3
Unit Name	Blythe Energy Center
Current Scheduling Coordinator SCID	LSCE
Resource Fuel Type	Gas
Resource Category (1, 2, 3 or 4)	4
Unit EFC Category (1, 2, 3 or N/A)	N/A
Local Capacity Area (if applicable, as of Confirmation Effective Date)	CAISO System

Unit 1 Contract Quantity Unit Allocation



- (1) Unit NQC (Net Qualifying Capacity in MW as of the Confirmation Effective Date)
- (2) If Flexible Capacity is designated as applicable in Section 1.1, Unit EFC (Effective Flexible Capacity in MW, as of the Confirmation Effective Date)

APPENDIX D SUPPLY PLAN INFORMATION

Benefitting load serving entity SCID:	LSVCE
Counterparty Supply Plan contact inform	nation:
Name:	
Scheduling:	
Attn:	
SCE Supply Plan contact information ¹ :	
Name:	

1. SCE Contract Manager must also be included on all communications.

APPENDIX E SUBSEQUENT SALE INFORMATION

Contract Key ID:	
Subsequent sale contract quantity (in MW):	
Subsequent sale delivery period:	
Amount of Inflexible Capacity included in subsequent sale contract quantity (in MW):	
New benefitting load serving entity SC identification number:	

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("<u>Seller</u>") and **San Diego Community Power**, a California joint powers authority ("<u>Purchaser</u>"), and each individually a "<u>Party</u>" and together the "<u>Parties</u>", dated as of June 27, 2023 (the "<u>Effective Date</u>"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "<u>Transaction</u>"). This Transaction is governed by the WSPP Agreement dated August 26, 2022 (the "<u>WSPP Agreement</u>"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "<u>Agreement</u>" 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.
- (c) 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 reductions in Unit NQC or Unit EFC of any Unit(s).

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

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

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 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 ("<u>Planned Outage Schedule</u>") 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 two (2) Business Days before the Notification 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.

Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, (d) 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.

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.

(b) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4 OTHER PURCHASER AND SELLER COVENANTS

4.1 <u>CAISO Requirements</u>

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 <u>Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization</u>

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 <u>Termination Payment</u>

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then

Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

6.2 **Confidentiality**

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent

release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).*

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members

The Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Each Party will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it

will 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 Purchaser or Purchaser's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 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 EOUITY 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."

6.9 **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:

Silicon Valley Clean Energy, a California joint powers authority

Docusigned by:

Girish Balachandran

Name: Girish Balachandran

By:

Title: Chief Executive Officer

San Diego Community Power, a California joint powers authority

Ry: Karin Burns (Jun 26, 2023 17:12 PDT)

Name: Karin Burns

Title: Chief Executive Officer

APPENDIX A DEFINED TERMS

"<u>Alternate Capacity</u>" 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.

"<u>Capacity Attributes</u>" 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.

"<u>Flexible Capacity Category</u>" 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 thirteen (13) Calendar Days before the Compliance Showing Deadline.

"<u>Planned Outage</u>" 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.

"<u>Prorated Percentage of Unit Factor</u>" 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".
- "<u>Tariff</u>" 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.
- "<u>Unit EFC</u>" 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.
- "<u>Unit NQC</u>" 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 Capa	city	
and all Capacity Attrib	utes related to such Prod	luct.		
CAISO Zone: System Resource Category (Me CPUC Local Area (if a	,			
Delivery Period:				
Contract Quantity an	d Contract Price:			
	<u> </u>			
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<u>Unit 1</u>

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)	630
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
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.]

APPENDIX C NOTICE INFORMATION

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APPENDIX D PLANNED OUTAGE SCHEDULE

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date	
N/A	N/A	N/A	N/A	N/A	

WSPP RESOURCE ADEQUACY CONFIRMATION

This WSPP RESOURCE ADEQUACY CONFIRMATION (the "Confirmation") sets forth the transaction between Silicon Valley Clean Energy Authority ("Purchaser") and Saavi Energy Solutions, a Delaware limited liability company ("Seller"), dated as of May 4, 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 Western Systems Power Pool 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 and C are incorporated into this Confirmation.

ARTICLE 2 DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Contract Quantity of the Product from the Shown Unit(s).
- (b) Seller will deliver the Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the 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 Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Contract Quantity, less any excused deductions to the Contract Quantity in the case of Flexible RA Capacity for excused reductions in Unit EFC.
- (d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. Seller will identify the Shown Unit(s) and Contract Quantity by providing Purchaser with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- The Product is delivered and received when the CIRA Tool shows the Supply Plan (f) accepted for the Product from the Shown Unit by CAISO or Seller complies with Purchaser's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Purchaser will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Purchaser's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹
- (h) Excused Reductions in Unit EFC: Unless the Parties have designated this Section 2.1(h) as "Not applicable", if the Product includes FCR Attributes, then Seller's failure to deliver any of the Contract Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Effective Date as determined by CAISO and Seller has provided notice of such reduction to Purchaser by the Notification Deadline for the applicable Showing Month. The extent to which Seller's failure is excused will equal (i) the Contract Quantity of FCR Attributes for such day multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Effective Date, divided by (iii) the Unit EFC as of the Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller may, but is not obligated to, provide the applicable part of the Contract Quantity of FCR Attributes for such day from the Shown Unit.

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

2.2 Purchaser's Remedies for Seller's Failure to Deliver Contract Quantity

- (a) If Seller fails to deliver any part of the Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.
- (c) If Seller is required to substitute or replace all or any portion of the Expected Contract Quantity in accordance with CPUC requirements and can meet these requirements, then the Expected Contract Quantity will be deemed to have been delivered.

2.3 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 2.3(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than three (3) Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or

further resales no later than three (3) Business Days before the Notification Deadline for the Showing Month.

ARTICLE 3 PAYMENTS

3.1 Payment

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation. Purchaser shall make a monthly payment to Seller for the Product by the later of (a) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice and (b) the twentieth (20th) day of the Showing Month; provided, however, if such day is not a Business Day, then payment shall be made on the following Business Day (the "Monthly RA Capacity Payment"). If Purchaser has not paid the Monthly RA Capacity Payment by the second (2nd) Business Day after written notice of non-payment from Seller, then Seller shall have the right to terminate this Confirmation and has the right and ability to remarket such volume for the remainder of the Delivery Period. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places).

3.2 Allocation of Other Payments and Costs

The Product does not confer to Purchaser any right to dispatch or receive the energy or ancillary services from the Shown Unit. Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.

ARTICLE 4 OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Contract Quantity to meet its Compliance Obligations. 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 Unit qualifies under the Tariff for the Product, and the Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit during the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;
- (d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 5 <u>ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS</u>

5.1 <u>Termination Payment</u>

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good

faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

5.2 **Confidentiality**

Notwithstanding Section 30.1 of the WSPP Agreement, (i) Purchaser may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

5.3 **Dodd-Frank Act**

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).*

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction results in any change in applicable law occurring after the Confirmation Effective Date that changes the RAR such that the Product can no longer be counted towards Purchaser's RAR, the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent.

5.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 Collateral Requirements

Notwithstanding anything herein or in the WSPP Agreement to the contrary (including, without limitation, Section 27 of the WSPP Agreement), neither Party shall be required to post collateral or other security for this Transaction.

5.7 No Recourse to Members of Purchaser

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser's constituent members, in connection with this Confirmation.

5.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 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) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"
- (f) In Section 22.3(f), delete the entire provision and replace it with the following:
 - "If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."
- (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 DIEGO COUNTY, 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) The phrase "arbitration or" is deleted from the first line of Section 34.4.
- (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 WAIVED. EXCEPT AS OTHERWISE SPECIFIED CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF 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 of the section: "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."

5.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic 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.

5.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may

be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[signature page follows]

AGREED AS OF THE EFFECTIVE DATE:

SAAVI ENERGY SOLUTIONS, a Delaware limited liability company

By: Mauricio del Valle Ramos
Name: Mauricio del Valle Ramos
Title: Vice President and Assistant

Secretary

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: DocuSigned by:

Givish Baladian dran

5CA64B8AC4C24C3.

Name: <u>Girish Balachandran</u>
Title: Chief Executive Officer

APPENDIX A DEFINED TERMS

"CAISO" means the California ISO.

"Capacity Attributes" means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Compliance Obligations" means, as applicable, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE's compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

"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.

"<u>FCR Attributes</u>" means, with respect to a Unit, any and all resource adequacy attributes of the Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE's FCR.

- "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- "<u>Local RAR</u>" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.
- "LSE" means "Load Serving Entity" as such term is used in Section 40.9 of the Tariff.
- "MW" means megawatt.
- "Net Qualifying Capacity" or "NQC" has the meaning given in the Tariff.
- "Notification Deadline" is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.
- "Product" means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.
- "<u>Prorated Percentage of Unit Factor</u>" 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.
- "<u>Prorated Percentage of Unit Flexible Factor</u>" means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.
- "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.
- "SC" means Scheduling Coordinator as defined in the Tariff.
- "Showing Month" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.
- "Shown Unit" means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.
- "Subsequent Purchaser" means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.
- "Tariff" means the CAISO Tariff, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

"Unit" means the generation unit described in Appendix B and any Shown Unit.

"<u>Unit EFC</u>" means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

"<u>Unit NQC</u>" means Unit Net Qualifying Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

APPENDIX B PRODUCT AND UNIT INFORMATION

Product:				
	☐ Local RAR	☐ Flexible RAR		
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): N/A				
Delivery Period:				

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

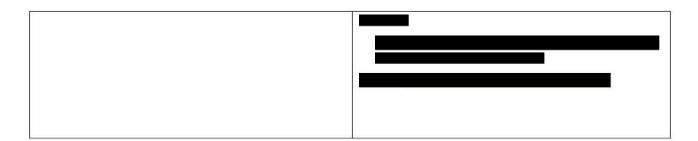
<u>Unit 1</u>

Unit Specific Information	
Resource Name	La Rosita 2
Physical Location	Mexicali
CAISO Resource ID	LAROA2_2_UNITA1
SCID of Resource	ISE1
Unit NQC by month (e.g., Jan=50,Feb=65):	322 mws
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Gas
Minimum Qualified Flexible Capacity Category	N/A
(Flex 1, 2 or 3)	
TAC Area (e.g., PG&E, SCE)	South
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, ,	San Diego-IV
Kern, LA Basin, Bay Area, Stockton, Big Creek-	
Ventura, NCNB, San Diego-IV or Humboldt)	
Resource Category as defined by the CPUC	4
(DR, 1, 2, 3, 4)	

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C NOTICE INFORMATION





WSPP RESOURCE ADEQUACY CONFIRMATION

This confirmation under the WSPP Agreement ("Confirmation") confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority ("SVCE") and Clean Power Alliance of Southern California, a California joint powers authority ("CPA"), and each individually a "Party" and together the "Parties", dated as of June 13, 2023 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). This Transaction is governed by the WSPP Agreement dated August 26, 2022 (the "WSPP Agreement"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments hereto, shall be collectively referred to herein as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

The terms of the Transaction to which this Confirmation relates are as follows:

i ui chasei.	Sincon valley Clean I	Bileigy	Bellel .	Clean I ower Amance of Southern
				California
	200			
Product:		⊠ RA	R 🔲 Loca	l RAR ☐ Flexible Capacity, as
Trouuct.		further described in Appendix B		
Contract Price	ce (\$/kW-mo):	as further described in Appendix B		s further described in Appendix B
Contract Qua	Quantity (MW): as further described in Appendix B		r described in Appendix B	
Delivery Period:		1		, inclusive, as further
		à.	ш Аррс	endix D
Unit:		SUNC	AT_2_A2A	ABT2, as further described in
		Appendix B		
Payment Terms:		20 th Da	y of Show	ing Month, as further described in
		Article	3	
Collateral:				
Total Notion	al Value:			

Purchaser: Silicon Valley Clean Energy Seller: Clean Power Alliance of Southern

This Confirmation is subject to the Appendices identified below and attached hereto: Appendix A – Defined Terms Appendix B – Product and Unit Information Appendix C – Notice Information Appendix D – Planned Outage Schedule

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

SILICON VALLEY CLEAN ENERGY, a California joint powers authority

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority

	DocuSigned by:	joint powers authority
Sign:	Girish Balachandran	Sign: Lindsay Sayby
Print:	Girish Balachandran	Print: Lindsay Saxby
Title:	Chief Executive Officer	Title: Vice President, Power Supply

ARTICLE 1 TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are described on page 1 of this Confirmation and in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

ARTICLE 2 DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for each day of the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month shall equal the Expected Contract Quantity.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and

the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller shall not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC.¹

2.2 Adjustments to Contract Quantity

If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings for each day of that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 <u>Seller's Option To Provide Alternate Capacity</u>

If Seller is unable to provide the full Contract Quantity for each day of each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide a portion of the Contract Quantity for any day of a Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each day of the Showing Month is not more than the Contract Quantity, provided that in each case:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Unit(s) from which such Alternate Capacity shall be provided before the Notification Deadline for such Showing Month; and
- (b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

4

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3, and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("<u>Planned Outage Schedule</u>") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any such Seller proposed changes, Purchaser shall notify Seller in writing of reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event shall Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

(a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used

herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller shall be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity for re-sale into such market, and Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.
- (d) Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit's SC shall comply with the Purchaser's direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Purchaser shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Purchaser, (i) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Purchaser of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit's SC to not, accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

ARTICLE 3 PAYMENTS

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Business Days after Purchaser's receipt of Seller's invoice or (ii) the twentieth (20th) day of the Showing Month; provided, however, if such day is not a Business Day then payment shall be made on the following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller shall receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4 OTHER PURCHASER AND SELLER COVENANTS

4.1 <u>CAISO Requirements</u>

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 <u>Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization</u>

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation, cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested and supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy RAR pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) The aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for the Shown Unit(s);

- (d) If applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5 ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

"If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained."

5.2 <u>Confidentiality</u>

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may

disclose to a Unit's SC or as necessary for submitting Supply Plans; and (iii) Purchaser may disclose information to any Subsequent Purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential.

(b) Upon request or demand of any third person or entity not a Party hereto to CPA pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), CPA will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by CPA. If Seller takes no such action after receiving the foregoing notice from CPA, CPA shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, CPA shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless CPA, its officers, employees and agents ("CPA Indemnified Parties") from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of CPA Indemnified Parties for CPA's refusal to disclose any Requested Confidential Information.

5.3 **Dodd-Frank Act**

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).*

5.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction results in any change in applicable law occurring after the Confirmation Effective Date that (i) materially changes Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent. If the Change in Law results in the

Product no longer being able to be counted towards Purchaser's Resource Adequacy Requirements, and the Parties have not reached agreement on amendments within thirty (30) days after the initiation of discussions regarding the Change in Law that would allow the Product to be able to be counted towards Purchaser's Resource Adequacy Requirements, Purchaser may terminate this Confirmation upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, subject to payment of any amounts owing as of the effective date of such termination.

5.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 Collateral

Seller shall provide collateral in the amount of



Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation.

5.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:
 - "(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets."

- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting "and is continuing" after "Event of Default occurs" in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3 of the WSPP Agreement is amended by:
 - In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: "If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary."
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"
- (e) In Section 22.3(f), delete the entire provision and replace with the following:
 - "If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."
- (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
- (g) Section 30.1 of the WSPP Agreement is amended by inserting "or requested" after the word "required" in Section 30.1(4) and by adding the following at the end of the first sentence: "; or (8) to the Party's and such Party's affiliates' lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential".
- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

"34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A

DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION."

"34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN LOS ANGELES, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM."

- (i) The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5:

"34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF INCIDENTAL, PUNITIVE, DAMAGE. INCLUDING EXEMPLARY. CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE."

(k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: "On the date of entering into this Confirmation,".

(l) Section 41 "Witness" of the WSPP Agreement shall become Section 42 and the following "Standard of Review" Section shall be substituted in its place:

"The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the "Mobile-Sierra" doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

5.9 <u>Counterparts</u>

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

APPENDIX A DEFINED TERMS

"<u>Alternate Capacity</u>" means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

"CAISO" means the California ISO or the successor organization to the functions thereof.

"Capacity Attributes" means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Compliance Obligations" means, as applicable, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE's compliance with the Resource Adequacy Requirements of the CPUC for an applicable Showing Month.

"Contingent Firm RA Product" has the meaning set forth in Article 1 herein.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to the Resource Adequacy Requirements.

"Effective Flexible Capacity" has the meaning given in the CAISO Tariff.

"Environmental Costs" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product's compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

"Expected Contract Quantity" means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the

amount of Contract Quantity of Product that Seller has elected to provide as Alternate Capacity with respect to such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide as Alternate Capacity with respect to such day, less any reductions to Contract Quantity for such day consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

"Firm RA Product" has the meaning set forth in Article 1 herein.

"Flexible Capacity" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"<u>Local RAR</u>" means the local Resource Adequacy Requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"LSE" means "Load Serving Entity" as such term is used in Section 40.9 of the Tariff.

"MW" means megawatt.

"Net Qualifying Capacity" has the meaning given in the CAISO Tariff.

"Notification Deadline" is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"<u>Planned Outage</u>" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

"Product" means RAR, Local RAR and/or FCR for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications described on page 1 of this Confirmation and contained in Appendix B.

"<u>Prorated Percentage of Unit Factor</u>" 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.

"<u>Prorated Percentage of Unit Flexible Factor</u>" means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

"Prudent Operating Practice" means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

"Replacement Unit" means a generating unit meeting the requirements specified in Section 2.3.

"Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"SC" means Scheduling Coordinator as defined in the Tariff.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

"Shown Unit" means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

"Subsequent Purchaser" means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

"<u>Tariff</u>" 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.

"<u>Unit</u>" means the generation unit described in Appendix B. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

"<u>Unit EFC</u>" 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.

"<u>Unit NQC</u>" 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 Attribu	ites related to such Prod	uct.		
Delivery Period:				
Contract Quantity and Contract Price:				

RAR and $Flex\ RAR$, as applicable

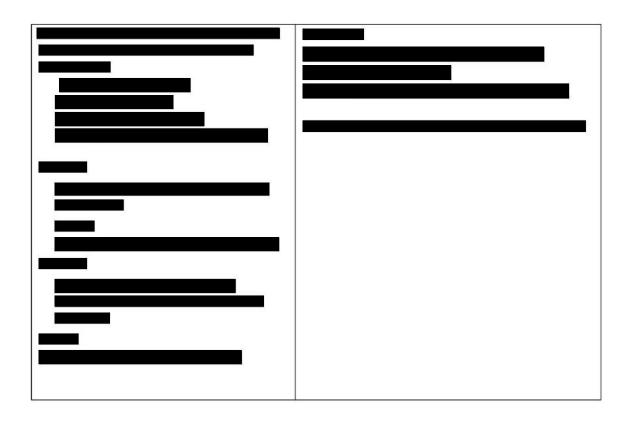
Showing	RAR and Flex	
Month and	Contract Quantity	Contract Price
Year	(MW)	(\$/kW-mo)

<u>Unit 1</u>

Unit Specific Information		
Resource Name	Arlington Energy Center II - BESS	
Physical Location	Blythe, CA	
CAISO Resource ID	SUNCAT_2_A2ABT2	
SCID of Resource	CPAA	
Unit NQC by month (e.g., Jan=50,Feb=65):	132 MW	
Unit EFC by month (e.g., Jan=30, Feb=50)	na	
Resource Type (e.g., gas, hydro, solar, etc.)	LESR	
Minimum Qualified Flexible Capacity	na	
Category (Flex 1, 2 or 3)		
TAC Area (e.g., PG&E, SCE)	SCE	
Prorated Percentage of Unit Factor	na	
Prorated Percentage of Unit Flexible Factor	na	
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 (24/7 = no)	

APPENDIX C NOTICE INFORMATION

Buyer: Silicon Valley Clean Energy	Seller: Clean Power Alliance of Southern California



APPENDIX D PLANNED OUTAGE SCHEDULE

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **East Bay Community Energy Authority**, 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 June 21, 2023 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). This Transaction is governed by the WSPP Agreement dated August 26, 2022 (the "WSPP Agreement"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments 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.
- (c) 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 reductions in Unit NQC or Unit EFC of any Unit(s).

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

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

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 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.

Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("<u>Planned Outage Schedule</u>") 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 two (2) Business Days before the Notification 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.

Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, (d) 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.

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.

(b) 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 <u>Seller's Representations and Warranties</u>

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:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent

release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser's legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013).*

6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser's or Seller's obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser's Resource Adequacy Requirements (a "Change in Law"), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members

The Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Each Party will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it

will 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 Purchaser or Purchaser's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 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 EOUITY 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."

6.9 **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:

East Bay Community Energy, a California joint powers authority

DocuSigned by: By: 205FAF1AF9DE4A7 Marie Fontenot

Name: Vice President of Power Resources Title: Chief Executive Officer Title:

Silicon Valley Clean Energy, a California joint powers authority

DocuSigned by: Girish Balachandran By:

Name: Girish Balachandran

APPENDIX A DEFINED TERMS

"<u>Alternate Capacity</u>" 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.

"<u>Flexible Capacity Category</u>" 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.

"<u>Prorated Percentage of Unit Factor</u>" 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".
- "<u>Tariff</u>" 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.
- "<u>Unit EFC</u>" 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.
- "<u>Unit NQC</u>" 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 Attribute	es related to such Prod	uct.
Additional Product Inform CAISO Zone: System Resource Category (MCC CPUC Local Area (if app Flexible Capacity Category	C Bucket): 4 licable): N/A	
Delivery Period:		, inclusive.
Contract Quantity and	Contract Price:	

Showing Month and Year	RAR Contract Quantity (MW)	Flex Contract Quantity (MW)	Contract Price (\$/kW-mo)

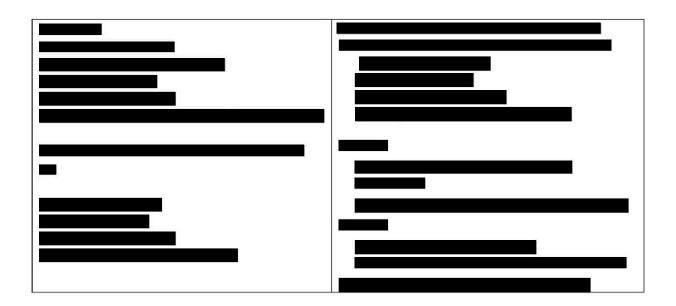
<u>Unit 1</u>

Unit Specific Information		
Resource Name	Palomar Energy Center	
Physical Location	Escondido, CA	
CAISO Resource ID	PALOMR_2_PL1X3	
SCID of Resource	LSDGE	
Unit NQC by month (e.g., Jan=50,Feb=65):	463.21	
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	
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	

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C NOTICE INFORMATION

Seller: East Bay Community Energy	Purchaser: Silicon Valley Clean Energy



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