



George Tyson, Chair
Town of Los Altos Hills

Larry Klein, Vice Chair
City of Sunnyvale

Elliot Scozzola
City of Campbell

R "Ray" Wang
City of Cupertino

Zach Hilton
City of Gilroy

Sally Meadows
City of Los Altos

Rob Rennie
Town of Los Gatos

Garry Barbadillo
City of Milpitas

Bryan Mekechuk
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Pat Showalter
City of Mountain View

Chuck Page
City of Saratoga

Otto Lee
County of Santa Clara

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

Wednesday, January 14, 2026
7:00 pm

Sunnyvale Civic Center
456 W. Olive Avenue
Sunnyvale, CA

Gilroy City Hall
Administration Conference Room
7351 Rosanna Street
Gilroy, CA

Teleconference Meeting
Webinar:

<https://svcleanenergy-org.zoom.us/j/89536827966>

Telephone (Audio Only):
US: +1 669-219-2599
Webinar ID: 895 3682 7966

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

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

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

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

AGENDA

George Tyson, Chair
Town of Los Altos Hills

Larry Klein, Vice Chair
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Elliot Scozzola
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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.

Adopt Resolution Commending George Tyson for His Dedicated Service as Chair of the Board of Directors in 2025

Consent Calendar (Action)

- 1a) Approve Minutes of the December 10, 2025, Board of Directors Meeting
- 1b) Approve Minutes of the December 12, 2025, Board of Directors Special Meeting
- 1c) Receive November 2025 Treasurer Report
- 1d) Appoint SVCE Treasurer/Auditor and Board Secretary for 2026
- 1e) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Titles and Change the Titles of Power Settlements and Compliance Analyst to Power Settlements Analyst, and Regulatory and Compliance Manager to Compliance Manager as Designated Positions for Filing Statements of Economic Interests
- 1f) Authorize the Chief Executive Officer to Finalize and Execute Agreement with Beals Martin and Associates, Inc. to Support the Development and Construction of SVCE's New Headquarters in the Amount of \$6,554,435
- 1g) Authorize the Chief Executive Officer to Execute an Amended and Restated Agreement with IP Darden III, LLC for 91.48 MW of Solar Photovoltaic Energy and a 91.48 MW Co-located, Four-Hour Battery Energy Storage System to Extend the Term of the Original Agreement by Five Years, Reduce the Price and Increase the Lifetime Not-to-Exceed Amount to \$440,000,000
- 1h) Receive Executive Committee Report



George Tyson, Chair
Town of Los Altos Hills

- 1i) Receive Additional Committees Report
- 1j) Receive California Community Power Report

Larry Klein, Vice Chair
City of Sunnyvale

Regular Calendar

Elliot Scozzola
City of Campbell

- 2) CEO Report (Informational)
- 3) Elect Silicon Valley Clean Energy Board Officers for 2026 (Action)
- 4) Authorize the Chief Executive Officer to Finalize Negotiations and Execute Necessary Agreements for Willow Rock Long Duration Energy Storage with California Community Power, Participating Community Choice Aggregators and Hydrostor's GEM A-CAES LLC (Action)
- 5) Adopt Resolution to Establish EV Rate Pilot Program (Action)
- 6) Approve the Transportation Electrification Programs Budget Reallocation (Action)
- 7) Receive Update on Net Billing Tariff (NBT, NEM 3.0) Following First Year of Customer Performance (Informational)

R "Ray" Wang
City of Cupertino

Zach Hilton
City of Gilroy

Sally Meadows
City of Los Altos

Rob Rennie
Town of Los Gatos

Garry Barbadillo
City of Milpitas

Board Member Announcements and Direction on Future Agenda Items

Bryan Mekechuk
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Adjourn

Pat Showalter
City of Mountain View

Chuck Page
City of Saratoga

Otto Lee
County of Santa Clara

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SVCE GLOSSARY OF TERMS

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

C&I – Commercial and Industrial – Business customers

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

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

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

CARE – California Alternate Rates for Energy Program – A monthly discount of 20% or more on gas and electricity. Participants qualify through income guidelines or if enrolled in certain public assistance programs.

CEC – California Energy Commission

CCCFA – California Community Choice Financing Authority – The California Community Choice Financing Authority (CCCFA) was established in 2021 with the goal to reduce the cost of power purchases for member community choice aggregators (CCAs) through pre-payment structures. The founding members of CCCFA include Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy. CCCFA is a Joint Powers Authority which can help member CCAs save up to 10% or more on power purchase agreements, helping reduce costs for ratepayers and increase available funding for local programs.

CC Power – California Community Power – California Community Power is a Joint Powers Agency comprised of nine CCAs. CC Power allows its member CCAs to combine their buying power to procure new, cost-effective clean energy and reliability resources to continue advancing local and state climate goals.

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

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

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

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

DER – Distributed Energy Resource – A small-scale unit of power generation that operates locally and is connected to a larger power grid at the distribution level.

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

eHub – SVCE’s online customer resource center with the latest information on electric vehicles, home electrification, and solar and battery storage.

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

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

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

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

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

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

IRA – Inflation Reduction Act

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

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

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

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

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

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

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

- MMT – Million Metric Tonnes** – Common unit of measurement in regulatory and policy space for California’s GHG emissions.
- MAWG** – Member Agency Working Group, a group of PIOs from SVCE’s member communities that gather monthly
- MW – Megawatt** – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.
- MWh – Megawatt-hour** – measure of energy
- NEM – Net Energy Metering** – A program in which solar customers receive credit for excess electricity generated by solar panels. The main differences between NEM and FIT programs are the type of rate (flat vs. dependent on time-of-day generation), number of meters required (two vs. one), and flexibility (long-term contract vs. non-binding program enrollment).
- PCC1 – RPS Portfolio Content Category 1** – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as “in-state” renewables
- PCC2 – RPS Portfolio Content Category 2** – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.
- PCC3 – RPS Portfolio Content Category 3** – Unbundled RECPSPS – **Public Safety Power Shutoff** – An event in which the IOUs purposely turn off segments of the grid due to high risk of ignition and wildfires.
- PCIA or “exit fee”** – Power Charge Indifference Adjustment (PCIA) is an “exit fee” based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.
- Power Content Label (PCL)** – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).
- PPA – Power Purchase Agreement** – A contract used to purchase the energy, capacity and attributes from a renewable resource project.
- Prepay** – payment in advance by a municipal utility for a number of years of contracted energy, and this prepayment with tax-exempt debt
- RA – Resource Adequacy** – Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments to contribute their share of system reliability. Today LSEs must procure no less than 115% of the peak hour load. In 2023 and 2024, this will increase to 116% and 117% respectively. Beginning in 2025 a new RA program will be implemented requiring LSEs show capacity to meet their hourly reliability needs, the “PRM” adder is still undetermined.
- RE – Renewable Energy** – Energy from a source that is not depleted when used, such as wind or solar power.
- REC – Renewable Energy Certificate** – A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.
- RPS – Renewable Portfolio Standard** – Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SB 100 – California Senate Bill 100 established a landmark policy requiring renewable energy and zero-carbon resources supply 100 percent of electric retail sales to end-use customers by 2045.

SMUD – Sacramento Municipality Utility District

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

TOB – Tariff On-bill – Tariff On-Bill Financing is a model in which utilities use a tariff to enable customers to pay back the cost of a solar panel without credit or income level conditions.

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

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

VPP – Virtual Power Plant – A cloud-based energy supply made up of a collection of an aggregation of distributed energy resources (DERs), such as smart EV chargers, smart thermostats, building energy management systems, battery storage systems, solar PV and smart inverters.

24/7 – Goal of supplying consumer energy demand with 100% carbon-free energy at all hours of the day

RESOLUTION NO. 2026-01

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY COMMENDING CHAIR GEORGE TYSON FOR HIS DEDICATED SERVICE AS CHAIR OF THE BOARD OF DIRECTORS IN 2025

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

WHEREAS, the Silicon Valley Clean Energy Authority (“SVCEA”) was formed on March 31, 2016, with eleven Cities and Towns and the County of Santa Clara deciding to become the initial members; and

WHEREAS, Director George Tyson served his second term as SVCEA’s Board Chair in 2025; and

WHEREAS, Chair Tyson contributed to the thoughtful discussions and recommendations of the Executive Committee and Audit Committee; and

WHEREAS, Chair Tyson, along with Vice Chair Larry Klein and Director Pat Showalter, led the review of SVCEA’s Operating Rules and Regulations for potential amendments to propose enhancements and best practices for the future of the agency, meeting with neighboring CCAs and performing research on their bylaws; and

WHEREAS, Chair Tyson represented SVCEA at four ribbon-cutting events commemorating a project providing stable and reliable renewable benefits; and

WHEREAS, Chair Tyson attended New York Climate Week to receive an Electric Innovation Award on behalf of SVCEA for joint work with Peninsula Clean Energy to support member agencies in adopting reach codes that incentivize all-electric construction and support EV charging at multifamily properties; and

WHEREAS, Chair Tyson toured the SunZia Wind Project, one of the largest renewable energy infrastructure projects in the country, which will provide SVCE with 125 megawatts of wind energy; and

WHEREAS, Chair Tyson approved millions of dollars in SVCE programs, such as rebates for customers to reduce use of fossil fuels through electrification, and grants that increase resilience and decarbonize critical community facilities; and

WHEREAS, Chair Tyson led the effort to return millions of dollars to SVCE customers in the form of a one-time bill credit to help customers with affordability; and

WHEREAS, Chair Tyson runs Board meetings efficiently, with a bit of humor, ensuring decisions are made in a timely manner and that Board members are engaged and all viewpoints are heard; and

NOW, THEREFORE, the Board of Directors of SVCEA hereby commends Chair Tyson and expresses its sincere appreciation for his dedicated service as Chair and as a member of the Board of Directors of the Authority.

ADOPTED AND APPROVED this 14th day of January 2026, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Scozzola				
City of Cupertino	Director Wang				
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 Barbadillo				
City of Monte Sereno	Director Mekechuk				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Showalter				
County of Santa Clara	Director Lee				
City of Saratoga	Director Page				
City of Sunnyvale	Director Klein				

Vice Chair

ATTEST:

Secretary



Silicon Valley Clean Energy Authority

Board of Directors Meeting

Wednesday, December 10, 2025

7:00 pm

Sunnyvale Civic Center
456 W. Olive Ave
Sunnyvale, CA

Gilroy City Hall
Administration Conference Room
7351 Rosanna Street
Gilroy, CA

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
Larry Klein (Vice Chair), Sunnyvale
Elliot Scozzola, Campbell
J.R. Fruen, Cupertino
Zach Hilton, Gilroy (participated remotely)
Sally Meadows, Los Altos
Rob Rennie, Los Gatos
Garry Barbadillo, Milpitas
Bryan Mekechuk, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill
Pat Showalter, Mountain View
Tina Walia, Saratoga

Absent:

Otto Lee, Santa Clara County

A quorum was present.

Public Comment on Matters Not Listed on the Agenda

No speakers.

Consent Calendar

Chair Tyson provided a summary of Item 1e) *Approve Amendment No. 1 to Employment Agreement for Chief Executive Officer*, noting the amendment reflects an extension with Monica Padilla, Chief Executive Officer (CEO), by one year to September 30, 2028; changes salary to \$450,000 effective October 1,

2025; provides an automatic cost of living adjustment of 3% as a maximum in subsequent years; and ensures the contribution from SVCE to her retirement account of 10%.

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 November 12, 2025, Board of Directors Meeting
- 1b) Approve Minutes of the November 14, 2025, Board of Directors Special Meeting
- 1c) Receive October 2025 Treasurer Report
- 1d) Approve Amendment No. 1 to Employment Agreement for Chief Executive Officer
- 1e) Authorize the Chief Executive Officer to Execute Agreements with the Cities of Sunnyvale and Los Altos to Administer City Rebates for Home Electrification
- 1f) Receive Closing Report of the 2025 Legislative Ad Hoc Committee of the Board
- 1g) Receive Finance and Administration Committee Report
- 1h) Receive Additional Committees Report
- 1i) Receive California Community Power Report

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

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

Regular Calendar

2) CEO Report (Informational)

CEO Padilla addressed the following in her report:

- Introduction of Blake VandeVelde, Manager of Information Technology, who provided brief welcome comments;
- A reminder that on December 12, 2025 at 10:00 a.m., SVCE will be holding a Special Board of Directors Meeting, in addition to hosting guest speaker Severin Borenstein at 8:30 a.m.; and
- Zoe Elizabeth, Director of Decarbonization Policy and Community Strategies, provided an update on Bay Area Air District rules and member agency electric code enhancement efforts.

There were no questions or comments on CEO Padilla's report.

3) Approve 2026 Silicon Valley Clean Energy Board of Directors Regular Board Meeting Schedule (Action)

Andrea Pizano, Board Clerk, presented the proposed regular Board of Directors meeting schedule for 2026, noting a conflict in November due to the Veterans Day holiday.

Board members discussed availability and preferred timing for a November meeting. Vice Chair Klein noted the potential turnover for Board members in 2026, and suggested a poll could be sent to reconfirm November availability in the new year.

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

MOTION: Vice Chair Klein moved and Director Mekechuk seconded the motion to approve the 2026 Board of Directors regular meeting schedule of the second Wednesday of the month at 7:00 p.m. with a July summer recess and the November meeting to take place on November 13, 2026 at 3:00 p.m.

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

4) Approve 2026 Legislative Policy Platform and Identify Focus Areas for the 2026 Legislative Ad Hoc Committee (Action)

Bena Chang, Director of Government and Legislative Affairs, introduced Chris Micheli, SVCE's state lobbyist from Snodgrass & Micheli, LLC, who provided a state update and forecast of 2026 policies. Director of Government and Legislative Affairs Chang presented a federal update, reviewed the proposed 2026 Legislative Policy Platform, and requested the Board establish a Legislative Ad Hoc Committee to facilitate engagement between the SVCE Board and staff on legislative issues.

Staff responded to a questions from the Board on potential bill ideas.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment

MOTION: Director Martinez Beltran moved and Director Scozzola seconded the motion to approve SVCE's 2026 Legislative Policy Platform and create the 2026 Legislative Ad Hoc Committee.

Chair Tyson noted membership of the 2026 Legislative Ad Hoc Committee would be selected in 2026.

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

Following the vote on Item 4, the Board heard Item 6.

5) Approve Fiscal Year 2025-2026 Budget Update and 2026 Customer Rate Setting (Action)

This item was heard following Item 6.

Amrit Singh, Chief Financial Officer (CFO), presented a request for the Board of Directors to authorize the implementation of SVCE generation rate charges and adopt the updated fiscal year 2025-2026 operating budget. CFO Singh reviewed the highlights of the updated financial forecast which included the following:

- 2026 Customer Discount: recommendation of 1% and an additional \$12 bill credit for low-income customers;
- The five-year margins remained negative, under a business-as-usual scenario; and
- The fiscal year 2026 draw on reserves increased to \$60 million from \$40 million

Also included in the presentation was a comparison of the fiscal year 2026 adopted budget versus the adjusted budget, a rate comparison of 2025 rate to the adopted budget forecast 2026 rate, reserve projections, staff's proposal to keep the days cash on hand (DCOH) above 250, and a potential rate premium in 2027 to keep the DCOH above 250.

CFO Singh reviewed the staff recommendation for the Board of Directors to:

- 1) Authorize the CEO to implement SVCE generation rate changes to establish a 1% discount to PG&E's applicable generation rates, provide a \$12 monthly bill credit to CARE/FERA customers, and update the GreenPrime rate premium to \$0.0074/kWh, when PG&E's updated rates are implemented, expected to be January 1, 2026, or after allocation of the sufficient time window for implementing new generation rates in SVCE's billing system, expected to be within three weeks of PG&E's release of the new 2026 rates, and
- 2) Update the fiscal year 2025-2026 operating budget that projects withdrawal of \$60.5 million from the reserves, considering updated revenues, power supply expenses, and investment-earning forecasts; and allocation of \$5.5 million to the building fund.

Staff responded to Board member questions regarding PG&E rate projections, anticipated PG&E changes in the coming weeks, Power Charge Indifference Adjustment projections, timing of the Annual

Electric True-Up (AET) filing for PG&E, minimum target DCOH, and clarifying questions on staff's recommendation for 2026 rates in comparison to projections for 2027.

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

MOTION: Vice Chair Klein moved and Director Fruen seconded the motion to adopt Resolution 2025-24 approving customer generation rates and the fiscal year 2025-2026 updated budget.

The motion carried by verbal roll call vote with a no vote by Director Barbadillo and Director Lee absent.

Following the vote on Item 5, the Board heard Item 7.

6) Data Center Information (Discussion)

This item was heard following Item 4.

Maren Wenzel, Director of Regulatory, Policy and Planning, presented information on data centers, which included an overview of data centers, California specific issues, and impacts to SVCE, and reviewed next steps in forecasting, regulatory advocacy, and customer engagement.

Staff responded to Board member questions regarding PG&E's forecast of data center growth, the potential impact to SVCE as a result of PG&E's Electric Rule 30, data centers in Santa Clara, SVCE's desire to serve all customers, an estimate of how many racks is a normal amount for AI data centers, clarification on if PG&E's Electric Rule 30 applies to any load that wants to connect at the transmission level and not only data centers, quarterly report status, state procurement orders, the 6,000 MW of additional net qualifying capacity by 2032 identified by the CPUC's Needs Assessment, if there will be any challenges with transmission and distribution associated with data centers, transmission constraints, and SVCE's annual peak load.

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

Following Item 6, the Board considered Item 5.

7) Financial Levers Overview and Introduction (Discussion)

This item was heard following Item 5.

CEO Padilla introduced the item, noting it was foundational information for the Special Meeting taking place on Friday, December 12, 2025, and for future discussions.

Justin Zagunis, Director of Customer Success, presented an overview of SVCE's financial levers, noting projected compression on margins and drawdown from reserves would require SVCE to adjust the way things are currently being done. Director of Customer Success Zagunis reviewed the potential financial levers which included: 1) moving from a rate discount to a premium, 2) loosening clean electricity targets, and 3) scaling back decarbonization programs.

Staff responded to Board member questions on SVCE's participation in California's wholesale energy spot market, and if there was a plan to discuss at the Special Meeting on December 12, 2025 the possibility of pulling funds from SVCE's new headquarters.

Chair Tyson opened Public Comment.
No speakers.

Chair Tyson closed Public Comment.

8) Integrated Decarbonization Roadmap (Discussion)

Director of Decarbonization Policy and Community Strategies Elizabeth and Colleen McCamy, Data Scientist, presented background information on the 2026 Integrated Decarbonization Roadmap, which will build off of seven years of previous work to build a plan focused to overcome future challenges. Staff reviewed emissions sources, customer types, decarbonization trends, and next steps for development of the roadmap which included a discussion at the December 12, 2025 Special Meeting.

Chair Tyson opened Public Comment.

No speakers.

Chair Tyson closed Public Comment.

Board Member Announcements and Future Agenda Items

Director Scozzola apologized for his absence at the November 12, 2025 Board of Directors meeting.

Director Meadows thanked Director Scozzola for his apology and announced the Los Altos City Council unanimously passed the implementation of the residential rebate program for heat pump HVAC systems and heat pump water heaters (HPWH).

Vice Chair Klein noted he connected with staff on a potential future policy discussion relating to remote meeting attendance.

Vice Chair Klein announced he received multiple applications for the 2026 Board Officers Nominating Committee and thanked Directors Showalter and Scozzola for their participation in the committee, which will also include Vice Chair Klein. Vice Chair Klein reminded the Board of Directors to submit their interest in serving as a Board Officer (Chair, Vice Chair, Executive Committee) to Board Clerk Andrea Pizano by close of business on December 12, 2025 and noted a reminder would be also be sent.

CEO Padilla announced the SVCE Office would be closed from December 25, 2025 – January 1, 2026.

Adjourn

Chair Tyson adjourned the meeting at 9:30 p.m.

ATTEST:

Andrea Pizano, Board Secretary



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

Friday, December 12, 2025

10:00 am

Juniper Hotel Cupertino
California Ballroom C
10050 S De Anza Blvd
Cupertino, CA 95014

DRAFT MEETING MINUTES

Call to Order:

Chair Tyson called the meeting to order at 10:03 a.m.

Roll Call

Present:

Directors

George Tyson (Chair), Los Altos Hills
Larry Klein (Vice Chair), Sunnyvale
Zach Hilton, Gilroy
Rob Rennie, Los Gatos
Bryan Mekechuk, Monte Sereno
Pat Showalter, Mountain View
Tina Walia, Saratoga

Alternate Directors

Maria Ristow, Los Gatos
Linda Swan, Los Altos Hills

Absent:

Directors

Elliot Scozzola, Campbell
J.R. Fruen, Cupertino
Sally Meadows, Los Altos
Garry Barbadillo, Milpitas
Yvonne Martinez Beltran, Morgan Hill
Otto Lee, Santa Clara County

Alternate Directors

Sergio Lopez, Campbell
Sheila Mohan, Cupertino
Tom Cline, Gilroy
Pete Dailey, Los Altos
Evelyn Chua, Milpitas
Lon Allan, Monte Sereno

Mark Turner, Morgan Hill
Chris Clark, Mountain View
Belal Aftab, Saratoga
Margaret Abe-Koga, Santa Clara County
Murali Srinivasan, Sunnyvale

Regular Calendar

1) SVCE Workshop: Strategies to Meet SVCE's Mission Amidst Changing Conditions

Chief Executive Officer (CEO) Monica Padilla welcomed attendees and SVCE staff provided brief introductions. CEO Padilla introduced Beth Vaughan, CalCCA CEO, Mindy Craig and Bianca Hutner from BluePoint Planning, who outlined the workshop agenda.

Directors and Alternates in attendance engaged in an activity to discuss different SVCE stories with varying key elements and program focus, identifying how much each story resonated with them.

The next activity presented various electrification trade-offs and Directors and Alternates were asked to select, in their opinion, which were the more valuable trade-offs for SVCE.

Directors and Alternates shared their responses and discussed common themes amongst the group.

Chair Tyson opened Public Comment.

Terry McCarthy, Monte Sereno resident, participated in the exercises and shared his thoughts on the prompts.

Chair Tyson closed Public Comment.

CEO Padilla outlined next steps in connecting with Directors who were not in attendance and preparing the next set of discussion items with the Board of Directors at a future meeting.

Adjourn

Chair Tyson adjourned the meeting at 11:57 a.m.

ATTEST:

Andrea Pizano, Board Secretary



TREASURER REPORT

**Fiscal Year to Date
As of November 30, 2025**

(Preliminary & Unaudited)

Issue Date: January 14, 2026

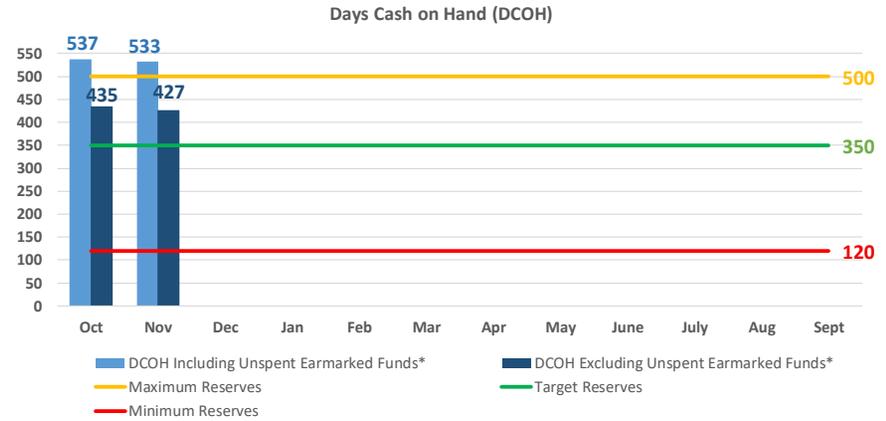
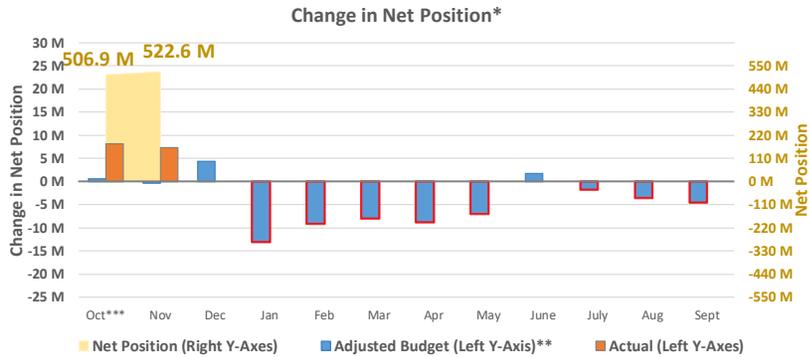
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SILICON VALLEY CLEAN ENERGY AUTHORITY Financial Statement Highlights (\$ in millions) November 30, 2025

Balance Sheet Highlights:

- > SVCE operations resulted in an increase in net position of \$7.3 million for the month of November or an increase of \$15.4 million for the first two months of the fiscal year 2025-2026 (FYTD).
- > Total Net Position increased to \$522.6 million from \$515.2 million at the end of October 2025.
- > SVCE is investing ~98.9% of available funds, recognizing interest/dividend income of \$4.2M FYTD.



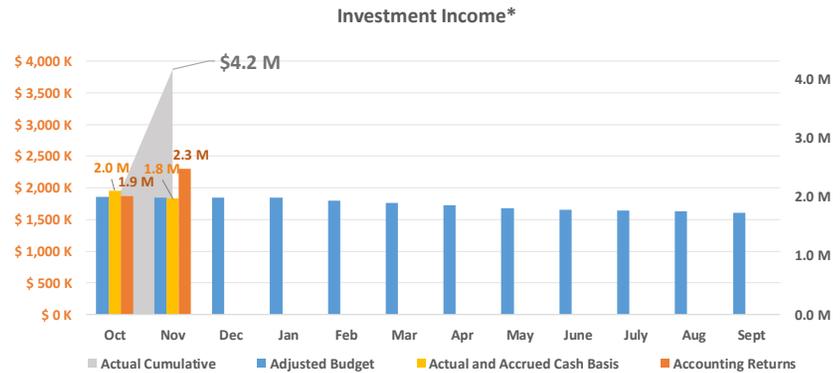
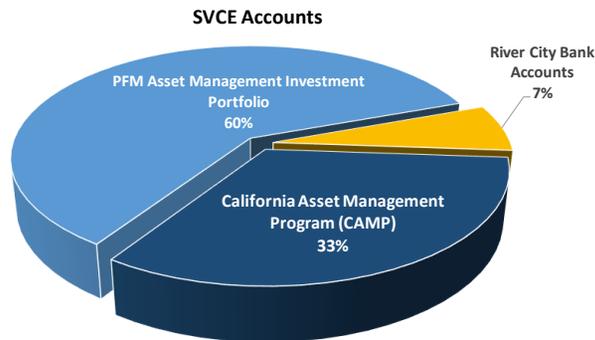
*Does not yet recognize unspent program dollars
 **For reconciliation purposes, budget numbers include actual program expenses and depreciation, excludes GASP 96 expenses.
 *** Displays the starting fiscal year net position on Oct. 1, 2025, of \$506.9M.

* Earmarked funds are unspent SVCE program and building funds.
 DCOH includes rate stabilization funds.
 DCOH is computed as Cash and cash equivalents plus investments divided by daily budgeted expenditures.
 October, 2025 results are updated per the Adjusted Budget adopted in December 2025.

SVCE Yield-bearing Accounts:

Combined Ending Balance*	587.0 M
Total Interest/Div. Earned FYTD	4.2 M
Average Yield to Maturity**	3.91%

* Includes River Bank accounts - Money Market, Collateral and ICS; CAMP; PFM Portfolio
 ** Average annualized yield for the current month. Investment yields are measured to maturity at market.



* Accounting returns investment of income includes unrealized mark-to-market gain or loss of the total investment portfolio as per US GAAP, Actual and Accrued Cash Basis excludes mark-to-market gains (losses).

SILICON VALLEY CLEAN ENERGY AUTHORITY
Financial Statement Highlights** (\$ in millions)
November 30, 2025

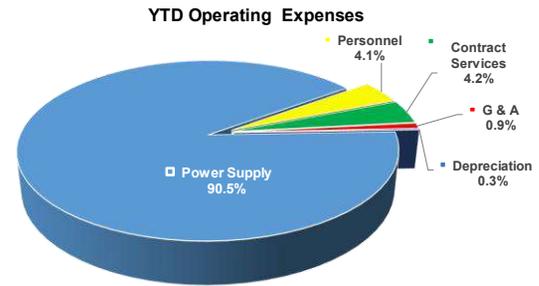
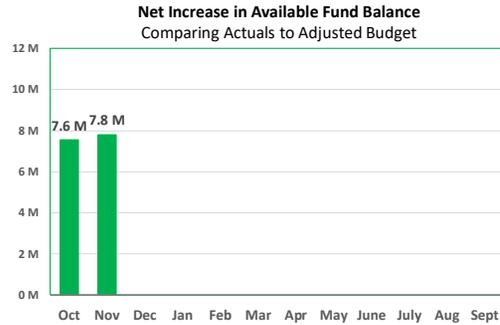
Summary of Actual Results vs. Adopted Budget (includes allocated but unspent program dollars):

- > Operating margin of \$18.7 million (or 25%) was significantly above the Adjusted Budget expectations of \$6.1M (8%) operating margin for the fiscal year to date.
- > FY 2025 Power Supply costs are -17% below Adjusted Budget.
- > Retail GWh sales landed -2% below Adjusted Budget for the month of November but were +2% for the fiscal year to date.

Variance Explanation:

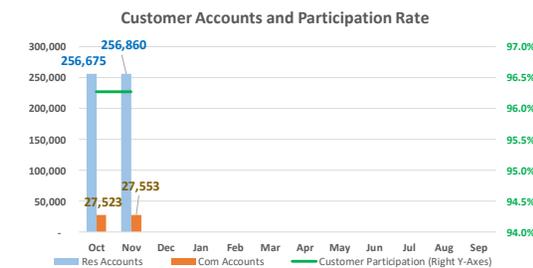
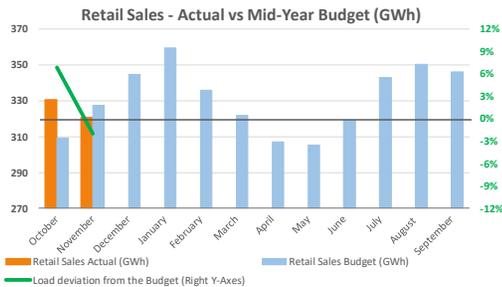
October - customer demand and revenues exceeded SVCE's forecast. Additionally, lower power supply costs and reduced operating expenses further improved the net position.

November - weaker revenues due to lower customer demand were offset by lower power supply cost



\$ in millions	November			Fiscal YTD			Main Drivers:
	Actual	Adj. Budget	% Dif	Actual	Adj. Budget	% Dif	
Revenue	35.8 M	37.7 M	-5.1%	74.5 M	73.3 M	1.6%	<ul style="list-style-type: none"> • Lower YTD customer demand and a negative true-up settlement, partly offset by \$14M liquidated damage payments. • Lower costs are mostly due to lower sales volume, decline in energy/attribute prices and the timing of invoicing. • Staffing vacancies, underrunning professional services, and lower marketing expenses • Reflects budgetary transfers to program and building funds offset by investment income. • Reflects budgetary transfers to program and building funds offset by higher investment income.
Power Supply Cost	27.4 M	35.5 M	-22.8%	55.8 M	67.2 M	-16.9%	
Operating Margin	8.4 M	2.2 M	274.5%	18.7 M	6.1 M	205.8%	
Operating Expenses (ex Power)	2.4 M	3.6 M	-32.7%	5.0 M	7.2 M	-31.2%	
Other Non-Op. Expen. (Income)	3.2 M	3.7 M	-13.3%	8.6 M	9.1 M	-6.0%	
Net Increase in Available Fund Balance	2.7 M	-5.1 M	-154.4%	5.1 M	-10.2 M	-150.2%	

Customer Load Statistics:



Total Accounts	284,413
Opt-Out Accounts (Month)	17
Opt-Out Accounts (FYTD)	31
Opt-Up Accounts (Month)	(6)
Opt-Up Accounts (FYTD)	(13)

Program Funds:

	Beginning Balance	End Balance	YTD Contributions	YTD Expenditures
General Program Fund	\$ 76,714,107	\$ 81,650,453	\$ 7,251,000	\$ 2,314,654
CRCR Fund*	\$ 4,911,889	\$ 4,835,309	\$ -	\$ 76,580
Electrification Discount Fund	\$ 8,740,312	\$ 8,740,312	\$ -	\$ -
Nuclear & Hanford Prog. Funds	\$ 7,691,455	\$ 7,672,491	\$ -	\$ 18,964
Building Fund	\$ 8,214,310	\$ 13,668,557	\$ 5,500,000	\$ 45,753

* Customer Relief and Community Resilience Fund

** The financial results in this report are preliminary and subject to change pending the closing of the books for the fiscal year.

SILICON VALLEY CLEAN ENERGY AUTHORITY

**STATEMENT OF NET POSITION
As of November 30, 2025**

ASSETS

Current Assets

Cash & Cash Equivalents*	\$ 236,677,725
Accounts Receivable, net of allowance	31,797,006
Accrued Revenue	26,786,332
Other Receivables	18,283,782
Prepaid Expenses	7,233,695
Deposits	933,991
Investments	98,316,822
Cash equivalents - restricted	1,246,728
Total Current Assets	421,276,081

Noncurrent assets

Investments**	258,393,926
Capital assets, net of depreciation	13,719,895
Total Noncurrent Assets	272,113,821
Total Assets	693,389,902

LIABILITIES

Current Liabilities

Accrued Cost of Electricity	56,315,824
Accounts Payable	2,127,308
Other accrued liabilities	2,686,050
User Taxes and Energy Surcharges due to other gov'ts	1,228,900
Total Current Liabilities	62,358,082

Noncurrent Liabilities

Supplier security deposits	8,478,125
Total noncurrent liabilities	8,478,125
Total Liabilities	70,836,207

DEFERRED INFLOWS OF RESOURCES

Rate Stabilization Fund	<u>100,000,000</u>
-------------------------	--------------------

NET POSITION

Net investment in capital assets	13,719,895
Restricted for security collateral	1,246,728
Unrestricted (deficit)	507,587,072
Total Net Position	\$ 522,553,695

* May not account for securities acquired towards the end of the month but not yet paid.

** May include securities acquired towards the end of the month but not yet paid.

SILICON VALLEY CLEAN ENERGY AUTHORITY

**STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2025 through November 30, 2025**

OPERATING REVENUES	
Electricity Sales, Net	\$ 74,080,576
GreenPrime electricity premium	390,600
Liquidated damages	<u>27,500</u>
TOTAL OPERATING REVENUES	<u>74,498,676</u>
 OPERATING EXPENSES	
Cost of Electricity	55,817,328
Contract services	2,596,776
Staff compensation and benefits	2,543,967
Program incentives	1,540,430
Other operating expenses	570,330
Depreciation and amortization	<u>159,210</u>
TOTAL OPERATING EXPENSES	<u>63,228,041</u>
OPERATING INCOME(LOSS)	<u>11,270,635</u>
 NONOPERATING REVENUES (EXPENSES)	
Investment Income	4,161,380
Financing costs	<u>(11,719)</u>
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>4,149,661</u>
 CHANGE IN NET POSITION	 15,420,296
Net Position at beginning of period	<u>507,133,399</u>
Net Position at end of period	<u>\$ 522,553,695</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS

October 1, 2025 through November 30, 2025

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 72,116,324
Receipts of liquidated damages	27,500
Receipts of wholesale sales	7,357,397
Payments to suppliers for electricity	(71,870,355)
Payments of security deposits	(30,000)
Payments for other goods and services	(4,940,004)
Payments for program incentives	(1,830,915)
Payments for staff compensation and benefits	(2,858,724)
Tax and surcharge payments to other governments	(2,503,897)
Net cash provided (used) by operating activities	<u>(4,532,674)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Payments of subscription liability and related interest	(114,260)
Acquisition of capital assets	(45,158)
Net cash provided (used) by capital and related financing activities	<u>(159,418)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Investment income received	3,827,864
Proceeds from investment sales	16,725,229
Purchase of investments	(93,673,594)
Net cash provided (used) by investing activities	<u>(73,120,501)</u>

Net change in cash and cash equivalents	(77,812,593)
Cash and cash equivalents at beginning of year	315,737,046
Cash and cash equivalents at end of period	<u>\$ 237,924,453</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents - unrestricted	236,677,725
Cash equivalents - restricted	1,246,728
Total cash and cash equivalents	<u>\$ 237,924,453</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)
October 1, 2025 through November 30, 2025

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

Operating Income (loss)	\$ 11,270,635
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	159,210
(Increase) decrease in accounts receivable	(8,702,992)
(Increase) decrease in accrued revenue	4,310,742
(Increase) decrease in other receivables	7,568,717
(Increase) decrease in prepaid expenses	(6,387,688)
(Increase) decrease in current deposits	(56,500)
Increase (decrease) in accrued cost of electricity	(10,631,916)
Increase (decrease) in accounts payable	(413,438)
Increase (decrease) in accrued liabilities	(1,182,941)
Increase (decrease) in taxes and surcharges due to other governments	(466,503)
Net cash provided (used) by operating activities	<u>\$ (4,532,674)</u>
 NONCASH INVESTING ACTIVITIES	
Change in fair value of investments	\$ 454,990
Change in interest receivable	\$ (121,474)

**SILICON VALLEY CLEAN ENERGY AUTHORITY
BUDGETARY COMPARISON SCHEDULE
October 1, 2025 through November 30, 2025**

	FYTD	FYTD	Variance		FY 2024-25	FY 2024-25
OPERATING REVENUES	Actual	Adjusted Budget	\$	%	Adjusted Budget	Remaining Budget
Energy Sales	\$75,009,196	\$73,844,831	\$ 1,164,365	2%	\$321,123,118	\$246,113,922
Green Prime Premium	390,600	400,489	(9,889)	-2%	\$2,468,912	2,078,312
Customer bill relief (existing CARE/FERA)	(928,620)	(930,825)	2,205	0%	-\$4,268,498	-
Other Income	27,500	-	27,500	n/a	\$0	(27,500)
TOTAL OPERATING REVENUES	74,498,676	73,314,495	1,184,181	2%	319,323,532	248,164,734
ENERGY EXPENSES						
Power Supply	55,817,328	67,206,021	(11,388,693)	-17%	344,220,910	288,403,582
Operating Margin	18,681,348	6,108,474	12,572,874	206%	(24,897,378)	(40,238,848)
OPERATING EXPENSES						
Data Management	601,127	627,270	(26,143)	-4%	3,763,620	3,162,493
PG&E Fees	200,575	261,450	(60,875)	-23%	1,568,700	1,368,125
Salaries & Benefits	2,543,967	3,145,062	(601,095)	-19%	18,870,370	16,326,403
Professional Services	707,674	1,816,959	(1,109,285)	-61%	10,901,756	10,194,082
Marketing & Promotions	232,465	391,125	(158,660)	-41%	2,346,750	2,114,285
General & Administrative	669,757	957,005	(287,248)	-30%	5,742,030	5,072,273
TOTAL OPERATING EXPENSES	4,955,565	7,198,871	(2,243,306)	-31%	43,193,226	38,237,661
OPERATING INCOME/(LOSS)	13,725,783	(1,090,397)	14,816,180	-1359%	(68,090,604)	(81,816,387)
NON-OPERATING REVENUES						
Investment Income	4,161,380	3,704,173	457,207	12%	20,882,403	16,721,023
TOTAL NON-OPERATING REVENUES	4,161,380	3,704,173	457,207	12%	20,882,403	16,721,023
NON-OPERATING EXPENSES						
Financing	-	4,767	(4,767)	-100%	28,600	28,600
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	-	85,333	(85,333)	-100%	512,000	512,000
Building Fund	5,500,000	5,500,000	-	0%	5,500,000	-
Transfer to Programs Fund	7,251,000	7,251,000	-	0%	7,251,000	-
TOTAL OTHER USES	12,751,000	12,836,333	(85,333)	-1%	13,263,000	512,000
NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE	\$ 5,136,163	\$ (10,227,324)	\$ 15,363,487	-150%	-\$60,499,802	-\$65,635,965

SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND

BUDGET RECONCILIATION TO STATEMENT OF

REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2025 through November 30, 2025

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 5,136,163
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(159,210)
Subtract program expense not in operating budget	(2,410,198)
Add back portion of lease payment applied to reduce lease liability	102,541
Add back transfer to Program funds	12,751,000
Add back capital asset acquisition	-
Change in Net Position	<u>15,420,296</u>

**SILICON VALLEY CLEAN ENERGY AUTHORITY
GENERAL PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2025 through November 30, 2025**

REVENUE & OTHER SOURCES:	<u>BUDGET</u>	<u>ACTUAL</u>	<u>BUDGET REMAINING</u>	<u>ACTUAL/ BUDGET</u>
Transfers in - General Programs	\$ 7,251,000	\$ 7,251,000	\$ -	100.0%
Total	\$ 7,251,000	\$ 7,251,000	\$ -	
 EXPENDITURES & OTHER USES:				
Program expenditures	22,242,570	2,314,654	19,927,916	10.4%
 Net increase (decrease) in fund balance	<u>\$ (14,991,570)</u>	<u>\$ 4,936,346</u>		
Fund balance at beginning of period		<u>76,714,107</u>		
Fund balance at end of period		<u><u>\$81,650,453</u></u>		

**CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2025 through November 30, 2025**

REVENUE & OTHER SOURCES:	<u>BUDGET</u>	<u>ACTUAL</u>	<u>BUDGET REMAINING</u>	<u>ACTUAL/ BUDGET</u>
Transfer from Operating Fund	\$ -		\$ -	n/a
 EXPENDITURES & OTHER USES:				
Other program expenditures	<u>963,704</u>	<u>76,580</u>	<u>887,124</u>	7.9%
Total Program expenditures	<u>963,704</u>	<u>76,580</u>	<u>887,124</u>	
 Net increase (decrease) in fund balance	<u>\$ (963,704)</u>	<u>\$ (76,580)</u>		
Fund balance at beginning of period		<u>4,911,889</u>		
Fund balance at end of period		<u><u>\$4,835,309</u></u>		

**ELECTRIFICATION DISCOUNT FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2025 through November 30, 2025**

	<u>BUDGET</u>	<u>ACTUAL</u>	<u>BUDGET REMAINING</u>	<u>ACTUAL/ BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund	\$ -	\$ -	\$ -	n/a
EXPENDITURES & OTHER USES:				
Program expenditures	4,500,000	-	4,500,000	0.0%
Net increase (decrease) in fund balance	<u>\$ (4,500,000)</u>	<u>0</u>	<hr/>	<hr/>
Fund balance at beginning of period		<u>8,740,312</u>		
Fund balance at end of period		<u>\$8,740,312</u>		

**BUILDING FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2025 through November 30, 2025**

	<u>BUDGET</u>	<u>ACTUAL</u>	<u>BUDGET REMAINING</u>	<u>ACTUAL/ BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfer in - Building Fund	\$ 5,500,000	\$ 5,500,000	\$ -	100.0%
EXPENDITURES & OTHER USES:				
Capital outlay	8,421,000	45,753		
Other building expenditures		<u>-</u>	-	
		45,753		
Net increase (decrease) in fund balance	<u>\$ (2,921,000)</u>	<u>5,454,247</u>	<hr/>	<hr/>
Fund balance at beginning of period		<u>8,214,310</u>		
Fund balance at end of period		<u>\$13,668,557</u>		

**NUCLEAR AND HANFORD PROGRAM FUNDS
BUDGETARY COMPARISON SCHEDULE
October 1, 2025 through November 30, 2025**

	<u>BUDGET</u>	<u>ACTUAL</u>	<u>BUDGET REMAINING</u>	<u>ACTUAL/ BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfers in - Nuclear Allocation	\$ -	\$ -		
Transfer in - Hanford Emissions Mitigation Fund	\$ -	\$ -	\$ -	n/a
Total	\$ -	\$ -	\$ -	
EXPENDITURES & OTHER USES:				
Program expenditures	<u>2,142,000</u>	<u>18,964</u>	2,123,036	
Net increase (decrease) in fund balance	<u>\$ (2,142,000)</u>	<u>-\$18,964</u>		
Fund balance at beginning of period		<u>7,691,455</u>		
Fund balance at end of period		<u>\$7,672,491</u>		

**SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2025 through November 30, 2025**

	October	November	December	January	February	March	April	May	June	July	August	September	YTD
OPERATING REVENUES													
Electricity sales, net	\$ 38,508,886	\$ 35,571,690											\$ 74,080,576
Green electricity premium	\$ 204,210	\$ 186,390											390,600
Liquidated damages	\$ 5,750	\$ 21,750											27,500
Other Income													-
Total operating revenues	38,718,846	35,779,830	-	-	-	-	-	-	-	-	-	-	74,498,676
OPERATING EXPENSES													
Cost of electricity	28,412,034	\$ 27,405,294											55,817,328
Staff compensation and benefits	1,276,785	\$ 1,267,182											2,543,967
Data manager	301,259	\$ 299,868											601,127
Service fees - PG&E	100,223	\$ 100,352											200,575
Consultants and other professional fees	899,290	\$ 895,784											1,795,074
Program incentives	1,146,022	\$ 394,408											1,540,430
Other operating expenses	279,315	\$ 291,015											570,330
Depreciation	79,605	\$ 79,605											159,210
Total operating expenses	32,494,533	30,733,508	-	-	-	-	-	-	-	-	-	-	63,228,041
Operating income (loss)	6,224,313	5,046,322	-	-	-	-	-	-	-	-	-	-	11,270,635
NONOPERATING REVENUES (EXPENSES)													
Grant income	-												-
Interest income	1,865,552	\$ 2,295,828											4,161,380
Financing costs	(3,797)	\$ (7,922)											(11,719)
Total nonoperating revenues (expenses)	1,861,755	2,287,906	-	-	-	-	-	-	-	-	-	-	4,149,661
CHANGE IN NET POSITION	\$ 8,086,068	\$ 7,334,228	\$ -	\$ 15,420,296									

**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2025 through November 30, 2025**

Ending Balance of SVCE Accounts:	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
River City Bank Accounts	\$ 40,453,602	\$ 39,908,498	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
California Asset Management Program (CAMP)	\$ 204,479,801	\$ 198,168,622	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PFM Asset Management Investment Portfolio	\$ 361,652,377	\$ 359,561,190	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Ending Balance	\$ 606,585,779	\$ 597,638,310	\$ -									

Return On Investments:

Annual % Yield	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
River City Bank Accounts	3.92%	3.70%										
California Asset Management Program (CAMP)	4.26%	4.10%										
PFM Asset Management Investment Portfolio *	3.90%	3.82%										
Average Return On Investments:	4.02%	3.91%										

* Yield to Maturity at Market.

Accounting Returns	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
River City Bank Accounts	\$ 20,457	\$ 13,570	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
California Asset Management Program (CAMP)	\$ 825,532	\$ 688,821	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Interest Income	\$ 4,447	\$ 3,138	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PFM Asset Management Investment Portfolio *	\$ 1,017,502	\$ 1,590,299	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Interest and Investment Gains	\$ 1,867,938	\$ 2,295,828	\$ -									

* Includes change in current market value (month over month), accrued interest and money market dividends (as per US GAAP).

Actual and Accrued Cash Basis Returns	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
River City Bank Accounts	\$ 20,457	\$ 13,570	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Camp Pool Composition (based on market value):	\$ 825,532	\$ 688,821	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Interest Income	\$ 4,447	\$ 3,138	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PFM Asset Management Investment Portfolio *	\$ 1,111,671	\$ 1,125,280	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Interest and Investment Gains	\$ 1,962,107	\$ 1,830,809	\$ -									

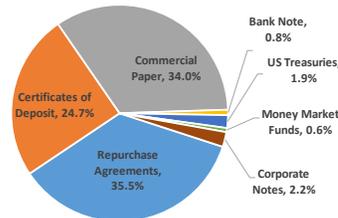
* Includes interest/dividends/coupons received, net realized gains/losses and monthly change in accrued interest.

CAMP Portfolio Statistics

As of November 30, 2025

Beginning of the Month Market Value	\$ 204,479,801
Ending of The Month Market Value	\$ 198,168,622
Monthly Distribution Yield	4.10%
Weighted Average Maturity (days)	45

Camp Pool Composition (based on market value)



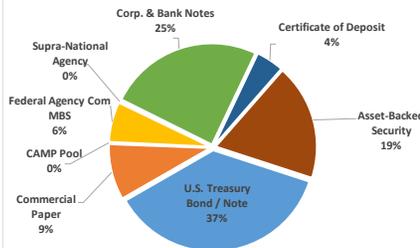
PFM Portfolio Statistics

As of November 30, 2025

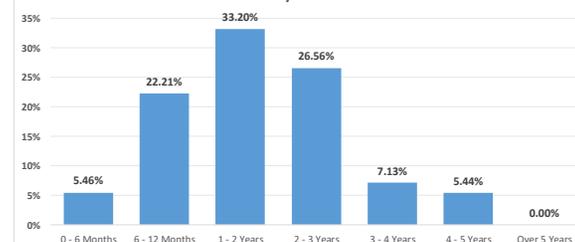
Portfolio Par Value	\$ 357,237,380
Portfolio Market Value (incl. Accrued Interest)	\$ 359,561,190
Yield to Maturity at Cost	4.18%
Yield to Maturity at Market	3.82%
Benchmark Yield*	3.54%
Portfolio Effective Duration (years)	1.34
Weighted Average Maturity (days)	681

*ICE BofA 0-3 Year U.S. Treasury Index

SVCE PFM Portfolio Investments



Maturity Distribution



SVCE Investment Policy:

https://svcleanenergy.org/wp-content/uploads/FP-08_Investments.pdf

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

	October	November	December	January	February	March	April	May	June	July	August	September	YTD
Retail Sales Actual (GWh)	330.4	320.7											651
Retail Sales Budget (GWh)	309.2	327.3	344.7	359.4	335.7	321.8	307.1	305.2	319.1	342.7	350.3	345.9	637
Load deviation from the Budget	6.8%	-2.0%											2.3%
Customer Participation Rate Res	96.3%	96.3%											
Customer Participation Rate Com	96.5%	96.4%											
Total Accounts	284,198	284,413											284,413
Opt-Out Accounts	14	17											31
Opt-Up Accounts	-7	-6											-13

Age Summary (as of 12/1/2025)

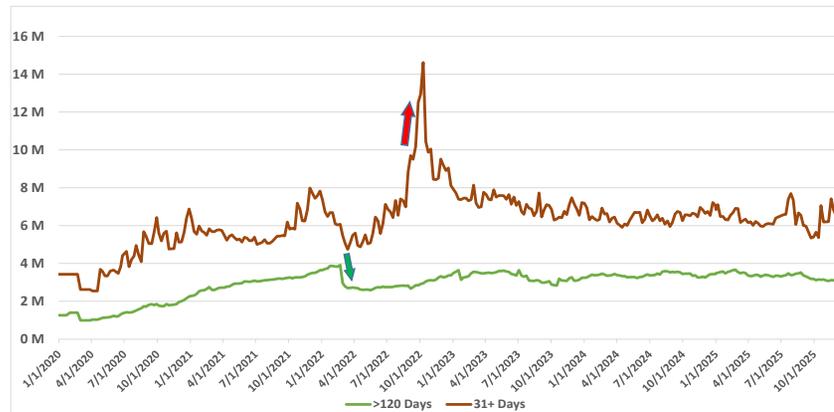
<30 days	\$28,927,001
<60 days	\$1,773,892
<90 days	\$1,041,740
<120 days	\$649,473
Older	\$3,058,177

Accounts Receivable Days
41 Days
\$35,450,283
TOTAL DUE

Bad Debt % (Budget)
0.75%

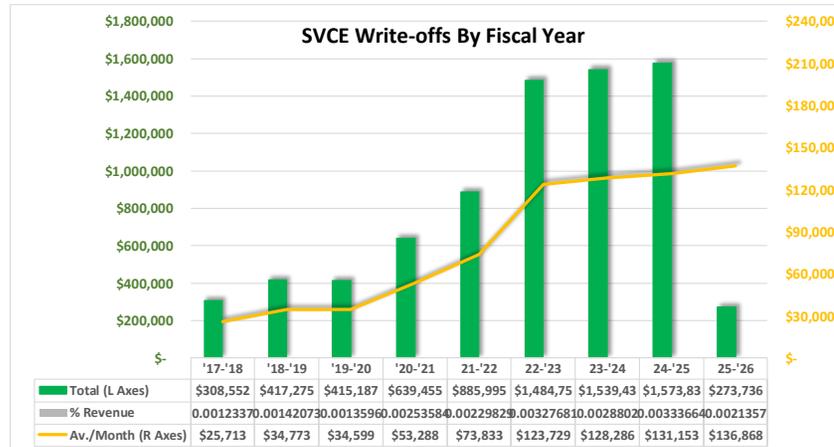
Bad Debt % (Actual)
October 2025 FYTD 0.37%

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	12/1/2025	\$6.5 M

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



Silicon Valley Clean Energy

November 30, 2025

Certificate of Compliance

During the reporting period for the month ended November 30, 2025, the account(s) managed by PFM Asset Management ("PFMAM") were in compliance with the applicable investment policy and guidelines as furnished to PFMAM.

Acknowledged : PFM Asset Management, a division of U.S. Bancorp Asset Management, Inc.

Note: Pre- and post-trade compliance for the account(s) managed by PFM Asset Management is provided via Bloomberg Financial LP Asset and Investment Management ("AIM").


Managed Account Security Transactions & Interest
For the Month Ending **November 30, 2025**
Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type		Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
Trade	Settle									
BUY										
10/28/25	11/05/25	COPAR 2025-1 A3 DTD 11/05/2025 3.850% 07/15/2030	14043YAD7	820,000.00	(819,826.32)	0.00	(819,826.32)			
10/28/25	11/05/25	GMCAR 2025-4 A2A DTD 11/05/2025 3.880% 12/18/2028	36273EAB9	2,795,000.00	(2,794,905.25)	0.00	(2,794,905.25)			
11/03/25	11/05/25	NOVARTIS CAPITAL CORP (CALLABLE) DTD 11/05/2025 3.900% 11/05/2028	66989HAX6	955,000.00	(954,789.90)	0.00	(954,789.90)			
11/03/25	11/05/25	NOVARTIS CAPITAL CORP (CALLABLE) DTD 11/05/2025 3.900% 11/05/2028	66989HAX6	750,000.00	(750,022.50)	0.00	(750,022.50)			
11/03/25	11/06/25	ALPHABET INC (CALLABLE) DTD 11/06/2025 3.875% 11/15/2028	02079KAV9	285,000.00	(284,754.90)	0.00	(284,754.90)			
11/04/25	11/05/25	NOVARTIS CAPITAL CORP (CALLABLE) DTD 11/05/2025 3.900% 11/05/2028	66989HAX6	725,000.00	(725,181.25)	0.00	(725,181.25)			
11/04/25	11/07/25	US TREASURY N/B DTD 10/15/2025 3.500% 10/15/2028	91282CPC9	2,000,000.00	(1,995,390.63)	(4,423.08)	(1,999,813.71)			
11/05/25	11/07/25	PACCAR FINANCIAL CORP DTD 11/07/2025 4.000% 11/07/2028	69371RU20	625,000.00	(624,650.00)	0.00	(624,650.00)			
11/05/25	11/12/25	HAROT 2025-4 A3 DTD 11/12/2025 3.980% 06/17/2030	43814XAD5	1,520,000.00	(1,519,705.73)	0.00	(1,519,705.73)			
11/05/25	11/12/25	HART 2025-D A3 DTD 11/12/2025 3.990% 09/16/2030	44891XAD9	1,580,000.00	(1,579,866.33)	0.00	(1,579,866.33)			
11/06/25	11/07/25	COMCAST CORP (CALLABLE) DTD 10/05/2018 4.150% 10/15/2028	20030NCT6	1,425,000.00	(1,427,807.25)	(3,613.96)	(1,431,421.21)			
11/10/25	11/12/25	US TREASURY N/B DTD 10/15/2025 3.500% 10/15/2028	91282CPC9	1,200,000.00	(1,196,765.63)	(3,230.77)	(1,199,996.40)			
11/10/25	11/14/25	CATERPILLAR FINL SERVICE DTD 11/14/2025 3.950% 11/14/2028	14913UBD1	2,000,000.00	(1,998,940.00)	0.00	(1,998,940.00)			
11/13/25	11/18/25	US TREASURY N/B DTD 10/31/2025 3.500% 10/31/2027	91282CPE5	1,500,000.00	(1,497,421.88)	(2,610.50)	(1,500,032.38)			
11/17/25	11/20/25	AMAZON.COM INC (CALLABLE) DTD 11/20/2025 3.900% 11/20/2028	023135CS3	920,000.00	(919,797.60)	0.00	(919,797.60)			
11/18/25	11/21/25	PFIZER INC DTD 11/21/2025 3.875% 11/15/2027	717081FJ7	915,000.00	(914,899.35)	0.00	(914,899.35)			
11/18/25	11/25/25	VZMT 2025-9 A1A DTD 11/25/2025 3.960% 10/21/2030	92348KEV1	1,420,000.00	(1,419,766.27)	0.00	(1,419,766.27)			



Managed Account Security Transactions & Interest

For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type		Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
Trade	Settle									
BUY										
11/18/25	11/25/25	VALET 2025-2 A3 DTD 11/25/2025 3.920% 03/20/2030	92869QAD1	1,240,000.00	(1,239,791.93)	0.00	(1,239,791.93)			
11/18/25	11/25/25	FORDO 2025-C A3 DTD 11/25/2025 3.900% 06/15/2030	34535LAD8	970,000.00	(969,848.68)	0.00	(969,848.68)			
Transaction Type Sub-Total				23,645,000.00	(23,634,131.40)	(13,878.31)	(23,648,009.71)			
CALL										
11/25/25	11/25/25	GOLDMAN SACHS GROUP INC (CALLABLE) DTD 02/25/2016 3.750% 02/25/2026	38143U8H7	400,000.00	400,000.00	3,750.00	403,750.00	18,320.00	0.00	
Transaction Type Sub-Total				400,000.00	400,000.00	3,750.00	403,750.00	18,320.00	0.00	
INTEREST										
11/01/25	11/01/25	CINTAS CORPORATION NO. 2 (CALLABLE) DTD 05/02/2025 4.200% 05/01/2028	17252MAR1		0.00	16,811.08	16,811.08			
11/01/25	11/25/25	FHMS K067 A2 DTD 09/01/2017 3.194% 07/01/2027	3137FAWS3		0.00	4,591.38	4,591.38			
11/01/25	11/25/25	FHMS K054 A2 DTD 04/01/2016 2.745% 01/01/2026	3137BNGT5		0.00	1,781.52	1,781.52			
11/01/25	11/25/25	FNA 2024-M6 A2 DTD 11/01/2024 3.001% 07/01/2027	3136BTGM9		0.00	5,001.43	5,001.43			
11/01/25	11/25/25	FHMS K059 A2 DTD 11/01/2016 3.120% 09/01/2026	3137BSRE5		0.00	1,815.65	1,815.65			
11/01/25	11/25/25	FHMS K069 A2 DTD 11/01/2017 3.187% 09/01/2027	3137FBU79		0.00	1,941.22	1,941.22			
11/01/25	11/25/25	FHMS K079 A2 DTD 08/01/2018 3.926% 06/01/2028	3137FGZT5		0.00	4,907.50	4,907.50			
11/01/25	11/25/25	FHMS K075 A2 DTD 04/01/2018 3.650% 02/01/2028	3137F4X72		0.00	4,486.46	4,486.46			
11/01/25	11/25/25	FHMS K057 A2 DTD 09/01/2016 2.570% 07/01/2026	3137BRQJ7		0.00	2,308.07	2,308.07			


Managed Account Security Transactions & Interest
For the Month Ending **November 30, 2025**
Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST											
	11/01/25	11/25/25	FHMS K076 A2 DTD 05/01/2018 3.900% 04/01/2028	3137FEZU7		0.00	3,900.00	3,900.00			
	11/01/25	11/25/25	FHMS K737 A2 DTD 01/01/2020 2.525% 10/01/2026	3137FOXJ7		0.00	2,209.37	2,209.37			
	11/01/25	11/25/25	FHMS K068 A2 DTD 10/01/2017 3.244% 08/01/2027	3137FBX3		0.00	2,297.83	2,297.83			
	11/01/25	11/25/25	FHMS KJ28 A2 DTD 02/01/2020 2.308% 10/01/2027	3137FREE7		0.00	2,525.36	2,525.36			
	11/01/25	11/25/25	FHMS K074 A2 DTD 03/01/2018 3.600% 01/01/2028	3137F4D41		0.00	3,000.00	3,000.00			
	11/01/25	11/25/25	FHMS K739 A2 DTD 11/01/2020 1.336% 09/01/2027	3137F64P9		0.00	2,623.44	2,623.44			
	11/01/25	11/25/25	FHMS K736 A2 DTD 09/01/2019 2.282% 07/01/2026	3137FNWX4		0.00	1,264.66	1,264.66			
	11/01/25	11/25/25	FHMS K066 A2 DTD 08/01/2017 3.117% 06/01/2027	3137F2LJ3		0.00	2,727.38	2,727.38			
	11/01/25	11/25/25	FNA 2018-M2 A2 DTD 02/01/2018 3.026% 01/01/2028	313680YM2		0.00	2,909.36	2,909.36			
	11/01/25	11/25/25	FHMS K058 A1 DTD 11/01/2016 2.340% 07/01/2026	3137BSP64		0.00	368.57	368.57			
	11/01/25	11/25/25	FHMS K065 A1 DTD 07/01/2017 2.864% 10/01/2026	3137F1G36		0.00	685.32	685.32			
	11/01/25	11/25/25	FHMS K063 A2 DTD 03/01/2017 3.430% 01/01/2027	3137BVZ82		0.00	6,359.79	6,359.79			
	11/07/25	11/07/25	CITIGROUP INC (CALLABLE) DTD 05/07/2025 4.643% 05/07/2028	172967PZ8		0.00	19,732.75	19,732.75			
	11/07/25	11/07/25	CREDIT INDUST ET COMM NY DTD 11/08/2024 4.550% 11/07/2025	22536WJ16		0.00	92,011.11	92,011.11			
	11/09/25	11/09/25	CUMMINS INC (CALLABLE) DTD 05/09/2025 4.250% 05/09/2028	231021AY2		0.00	2,975.00	2,975.00			
	11/12/25	11/12/25	APPLE INC (CALLABLE) DTD 05/12/2025 4.000% 05/12/2028	037833EY2		0.00	35,000.00	35,000.00			



Managed Account Security Transactions & Interest

For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST											
	11/13/25	11/13/25	NATIONAL RURAL UTIL COOP (CALLABLE) DTD 11/02/2023 5.600% 11/13/2026	63743HFK3		0.00	8,540.00	8,540.00			
	11/13/25	11/13/25	ROCHE HOLDINGS INC (CALLABLE) DTD 11/13/2023 5.265% 11/13/2026	771196CE0		0.00	20,138.63	20,138.63			
	11/13/25	11/13/25	PNC BANK NA (CALLABLE) DTD 05/13/2025 4.543% 05/13/2027	69353RFY9		0.00	10,562.48	10,562.48			
	11/13/25	11/13/25	MERCEDES-BENZ FIN NA DTD 11/15/2024 4.800% 11/13/2026	58769JBB2		0.00	24,000.00	24,000.00			
	11/14/25	11/14/25	TOYOTA MOTOR CREDIT CORP DTD 05/15/2025 4.500% 05/14/2027	89236TNG6		0.00	9,845.00	9,845.00			
	11/15/25	11/15/25	DCENT 2023-A1 A DTD 04/11/2023 4.310% 03/15/2028	254683CY9		0.00	4,669.17	4,669.17			
	11/15/25	11/15/25	KCOT 2025-1A A2 DTD 02/19/2025 4.610% 12/15/2027	50117FAB7		0.00	2,439.46	2,439.46			
	11/15/25	11/15/25	WFCIT 2025-A1 A DTD 06/10/2025 4.340% 05/15/2030	92970QAJ4		0.00	4,068.75	4,068.75			
	11/15/25	11/15/25	AMXCA 2025-1 A DTD 02/11/2025 4.560% 12/17/2029	02582JKM1		0.00	6,137.00	6,137.00			
	11/15/25	11/15/25	KCOT 2024-1A A2 DTD 02/21/2024 5.390% 01/15/2027	50117BAB6		0.00	837.34	837.34			
	11/15/25	11/15/25	FORDO 2024-D A2A DTD 11/22/2024 4.590% 10/15/2027	34535VAB0		0.00	1,340.90	1,340.90			
	11/15/25	11/15/25	COMET 2024-A1 A DTD 09/24/2024 3.920% 09/15/2029	14041NGE5		0.00	4,736.67	4,736.67			
	11/15/25	11/15/25	FORDO 2024-A A2A DTD 03/19/2024 5.320% 01/15/2027	34535EAB8		0.00	108.18	108.18			
	11/15/25	11/15/25	US TREASURY N/B DTD 05/15/2024 4.500% 05/15/2027	91282CKR1		0.00	157,500.00	157,500.00			
	11/15/25	11/15/25	TAOT 2024-A A3 DTD 01/30/2024 4.830% 10/16/2028	89238DAD0		0.00	1,270.51	1,270.51			
	11/15/25	11/15/25	MBART 2025-1 A2A DTD 01/23/2025 4.500% 02/15/2028	58773DAB0		0.00	4,660.35	4,660.35			



Managed Account Security Transactions & Interest

For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST											
	11/15/25	11/15/25	WOART 2025-C A2A DTD 08/13/2025 4.190% 10/16/2028	981936AB3		0.00	2,863.17	2,863.17			
	11/15/25	11/15/25	NAROT 2025-A A3 DTD 05/27/2025 4.490% 12/17/2029	65481GAD7		0.00	4,620.96	4,620.96			
	11/15/25	11/15/25	COMET 2025-A1 A DTD 09/16/2025 3.820% 09/16/2030	14041NGF2		0.00	7,543.97	7,543.97			
	11/15/25	11/15/25	US TREASURY N/B DTD 05/15/2025 3.750% 05/15/2028	91282CND9		0.00	37,500.00	37,500.00			
	11/15/25	11/15/25	FORDO 2025-A A2A DTD 03/25/2025 4.470% 12/15/2027	34535KAB4		0.00	7,246.36	7,246.36			
	11/15/25	11/15/25	US TREASURY N/B DTD 11/15/2018 3.125% 11/15/2028	9128285M8		0.00	42,968.75	42,968.75			
	11/15/25	11/15/25	NAROT 2024-B A2A DTD 10/23/2024 4.510% 06/15/2027	65479WAB0		0.00	2,077.66	2,077.66			
	11/15/25	11/15/25	CHAIT 2024-A1 A DTD 01/31/2024 4.600% 01/15/2029	161571HV9		0.00	2,664.17	2,664.17			
	11/15/25	11/15/25	WOART 2025-D A2A DTD 10/15/2025 3.910% 02/15/2029	98165HAB3		0.00	6,516.67	6,516.67			
	11/15/25	11/15/25	NAROT 2024-A A2A DTD 05/22/2024 5.470% 12/15/2026	65479UAB4		0.00	373.15	373.15			
	11/15/25	11/15/25	USAOT 2025-A A3 DTD 10/09/2025 3.950% 12/17/2029	90327HAC3		0.00	1,897.10	1,897.10			
	11/15/25	11/15/25	HAROT 2024-4 A2 DTD 10/24/2024 4.560% 03/15/2027	43816DAB1		0.00	2,767.78	2,767.78			
	11/15/25	11/15/25	ALLYA 2023-1 A3 DTD 07/19/2023 5.460% 05/15/2028	02007WAC2		0.00	1,451.36	1,451.36			
	11/15/25	11/15/25	BACCT 2023-A2 A2 DTD 12/14/2023 4.980% 11/15/2028	05522RDH8		0.00	1,473.25	1,473.25			
	11/15/25	11/15/25	HART 2024-C A2A DTD 10/16/2024 4.530% 09/15/2027	448976AB6		0.00	1,848.65	1,848.65			
	11/15/25	11/15/25	COPAR 2024-1 A2A DTD 11/26/2024 4.610% 10/15/2027	14043NAB5		0.00	731.09	731.09			
	11/15/25	11/15/25	HART 2024-B A2A DTD 07/24/2024 5.150% 06/15/2027	44934QAB7		0.00	798.17	798.17			



Managed Account Security Transactions & Interest

For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST											
	11/15/25	11/15/25	BAAT 2023-2A A3 DTD 11/21/2023 5.740% 06/15/2028	06054YAC1		0.00	3,056.66	3,056.66			
	11/15/25	11/15/25	FORDO 2024-C A2A DTD 09/20/2024 4.320% 08/15/2027	34532UAB5		0.00	1,258.85	1,258.85			
	11/15/25	11/15/25	TAOT 2024-B A2A DTD 04/30/2024 5.410% 03/15/2027	89237NAB3		0.00	313.55	313.55			
	11/15/25	11/15/25	AMXCA 2025-4 A DTD 07/22/2025 4.300% 07/15/2030	02582JKV1		0.00	2,938.33	2,938.33			
	11/15/25	11/15/25	TAOT 2024-C A2A DTD 07/30/2024 5.160% 05/17/2027	89237QAB6		0.00	418.91	418.91			
	11/15/25	11/15/25	TAOT 2025-D A3 DTD 10/23/2025 3.840% 06/17/2030	89231GAD0		0.00	3,449.60	3,449.60			
	11/15/25	11/15/25	BACCT 2024-A1 A DTD 06/13/2024 4.930% 05/15/2029	05522RDJ4		0.00	4,231.58	4,231.58			
	11/15/25	11/15/25	HART 2025-C A2A DTD 09/17/2025 3.970% 07/17/2028	44935JAB2		0.00	8,237.75	8,237.75			
	11/15/25	11/15/25	ALLYA 2024-2 A3 DTD 09/27/2024 4.140% 07/16/2029	02007NAC2		0.00	2,277.00	2,277.00			
	11/15/25	11/15/25	AMXCA 2023-3 A DTD 09/19/2023 5.230% 09/15/2028	02582JKD1		0.00	3,595.62	3,595.62			
	11/15/25	11/15/25	USAOT 2024-A A2 DTD 07/30/2024 5.250% 03/15/2027	90327VAB4		0.00	652.50	652.50			
	11/15/25	11/15/25	CHAIT 2023-A1 A DTD 09/15/2023 5.160% 09/15/2028	161571HT4		0.00	3,461.50	3,461.50			
	11/15/25	11/15/25	WOART 2024-B A2A DTD 05/22/2024 5.480% 09/15/2027	98164HAB4		0.00	141.52	141.52			
	11/15/25	11/15/25	BAAT 2024-1A A3 DTD 05/22/2024 5.350% 11/15/2028	09709AAC6		0.00	540.29	540.29			
	11/15/25	11/15/25	HART 2022-C A3 DTD 11/09/2022 5.390% 06/15/2027	44933DAD3		0.00	598.89	598.89			
	11/15/25	11/15/25	HART 2025-A A3 DTD 03/12/2025 4.320% 10/15/2029	44935CAD3		0.00	6,102.00	6,102.00			
	11/15/25	11/15/25	TAOT 2024-D A2A DTD 10/17/2024 4.550% 08/16/2027	89239TAB8		0.00	1,063.75	1,063.75			


Managed Account Security Transactions & Interest
For the Month Ending **November 30, 2025**
Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST											
	11/15/25	11/15/25	WOART 2024-C A2A DTD 08/20/2024 4.780% 01/18/2028	98164NAB1		0.00	1,402.21	1,402.21			
	11/15/25	11/15/25	CARMX 2022-2 A3 DTD 04/28/2022 3.490% 02/16/2027	14317HAC5		0.00	65.35	65.35			
	11/15/25	11/15/25	AMXCA 2025-2 A DTD 05/13/2025 4.280% 04/15/2030	02582JKP4		0.00	3,727.17	3,727.17			
	11/15/25	11/15/25	FORDO 2023-C A3 DTD 11/21/2023 5.530% 09/15/2028	344940AD3		0.00	1,301.47	1,301.47			
	11/15/25	11/15/25	KCOT 2024-2A A2 DTD 06/25/2024 5.450% 04/15/2027	50117DAB2		0.00	685.41	685.41			
	11/15/25	11/15/25	WFCIT 2024-A2 A DTD 10/24/2024 4.290% 10/15/2029	92970QAE5		0.00	2,341.63	2,341.63			
	11/15/25	11/15/25	FORDO 2024-B A2A DTD 06/24/2024 5.400% 04/15/2027	34531QAB5		0.00	2,053.76	2,053.76			
	11/15/25	11/15/25	WOART 2025-A A2A DTD 01/29/2025 4.490% 04/17/2028	98164YAB7		0.00	3,110.27	3,110.27			
	11/15/25	11/15/25	TAOT 2023-D A3 DTD 11/14/2023 5.540% 08/15/2028	89239FAD4		0.00	1,035.23	1,035.23			
	11/15/25	11/15/25	HDMOT 2023-B A3 DTD 09/27/2023 5.690% 08/15/2028	41285YAC9		0.00	3,236.79	3,236.79			
	11/15/25	11/15/25	AMXCA 2024-1 A DTD 04/23/2024 5.230% 04/16/2029	02582KH2		0.00	3,116.21	3,116.21			
	11/15/25	11/15/25	US TREASURY N/B DTD 11/15/2024 4.125% 11/15/2027	91282CLX7		0.00	102,093.75	102,093.75			
	11/15/25	11/15/25	ALLYA 2024-1 A3 DTD 03/13/2024 5.080% 12/15/2028	02008FAC8		0.00	1,368.02	1,368.02			
	11/15/25	11/15/25	TAOT 2025-A A2A DTD 01/29/2025 4.480% 11/15/2027	89240JAB7		0.00	4,677.46	4,677.46			
	11/15/25	11/15/25	KCOT 2025-2A A2 DTD 06/25/2025 4.480% 04/17/2028	50117LAB4		0.00	1,120.00	1,120.00			
	11/15/25	11/15/25	WFCIT 2024-A1 A DTD 03/01/2024 4.940% 02/15/2029	92970QAA3		0.00	3,807.92	3,807.92			
	11/16/25	11/16/25	GMCAR 2024-4 A2A DTD 10/16/2024 4.530% 10/18/2027	38014AAB7		0.00	1,144.53	1,144.53			



Managed Account Security Transactions & Interest

For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST											
	11/16/25	11/16/25	GMCAR 2025-4 A2A DTD 11/05/2025 3.880% 12/18/2028	36273EAB9		0.00	3,614.87	3,614.87			
	11/16/25	11/16/25	GMCAR 2025-1 A2A DTD 01/15/2025 4.440% 01/18/2028	362955AB2		0.00	3,389.67	3,389.67			
	11/16/25	11/16/25	GMCAR 2024-3 A2A DTD 07/10/2024 5.350% 06/16/2027	38013KAB6		0.00	652.67	652.67			
	11/16/25	11/16/25	GMCAR 2024-1 A3 DTD 01/17/2024 4.850% 12/18/2028	36268GAD7		0.00	418.67	418.67			
	11/16/25	11/16/25	GMCAR 2024-2 A2A DTD 04/10/2024 5.330% 03/16/2027	379931AB4		0.00	36.57	36.57			
	11/16/25	11/16/25	GMCAR 2023-4 A3 DTD 10/11/2023 5.780% 08/16/2028	379930AD2		0.00	1,845.56	1,845.56			
	11/20/25	11/20/25	VALET 2024-1 A2A DTD 11/26/2024 4.650% 11/22/2027	92868RAB4		0.00	3,271.85	3,271.85			
	11/20/25	11/20/25	VZMT 2025-3 A1A DTD 03/31/2025 4.510% 03/20/2030	92348KDY6		0.00	5,675.08	5,675.08			
	11/20/25	11/20/25	TMUST 2025-2A A DTD 08/06/2025 4.340% 04/22/2030	87268MAA3		0.00	1,862.58	1,862.58			
	11/20/25	11/20/25	PILOT 2025-1A A3 DTD 05/21/2025 4.610% 10/20/2028	73329KAD8		0.00	1,383.00	1,383.00			
	11/20/25	11/20/25	NATIONAL SECS CLEARING DTD 05/20/2025 4.350% 05/20/2027	637639AN5		0.00	13,158.75	13,158.75			
	11/20/25	11/20/25	TOYOTA MOTOR CREDIT CORP DTD 11/20/2023 5.400% 11/20/2026	89236TLD5		0.00	7,425.00	7,425.00			
	11/20/25	11/20/25	VALET 2023-2 A2A DTD 11/21/2023 5.720% 03/22/2027	92867YAB0		0.00	78.95	78.95			
	11/20/25	11/20/25	BAAT 2025-1A A3 DTD 05/12/2025 4.350% 11/20/2029	05594BAD8		0.00	1,015.00	1,015.00			
	11/20/25	11/20/25	TRUIST BANK (CALLABLE) DTD 05/20/2025 4.671% 05/20/2027	89788JAE9		0.00	22,537.58	22,537.58			
	11/20/25	11/20/25	VALET 2025-1 A2A DTD 03/25/2025 4.510% 01/20/2028	92868MAB5		0.00	5,936.26	5,936.26			
	11/21/25	11/21/25	HAROT 2024-3 A2 DTD 08/21/2024 4.890% 02/22/2027	43813YAB8		0.00	1,133.66	1,133.66			



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For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST											
	11/21/25	11/21/25	HAROT 2025-1 A2 DTD 02/11/2025 4.530% 08/23/2027	43814VAB3		0.00	8,757.98	8,757.98			
	11/21/25	11/21/25	GOLDMAN SACHS BANK USA (CALLABLE) DTD 05/21/2024 5.414% 05/21/2027	38151LAG5		0.00	9,609.85	9,609.85			
	11/21/25	11/21/25	HAROT 2025-3 A2A DTD 08/12/2025 4.190% 03/21/2028	43813QAB5		0.00	5,569.21	5,569.21			
	11/21/25	11/21/25	HAROT 2023-4 A3 DTD 11/08/2023 5.670% 06/21/2028	438123AC5		0.00	752.44	752.44			
	11/22/25	11/22/25	PFAST 2024-1A A2A DTD 12/13/2024 4.450% 01/24/2028	73328EAB7		0.00	585.66	585.66			
	11/22/25	11/22/25	PFAST 2025-1A A2A DTD 10/24/2025 3.910% 03/22/2029	732911AB8		0.00	8,271.82	8,271.82			
	11/25/25	11/25/25	CHAOT 2024-4A A2 DTD 07/30/2024 5.250% 09/27/2027	16144YAB4		0.00	473.00	473.00			
	11/25/25	11/25/25	STATE STREET BANK & TR DTD 11/25/2024 4.594% 11/25/2026	857449AC6		0.00	21,936.35	21,936.35			
	11/25/25	11/25/25	CHAOT 2024-3A A2 DTD 06/27/2024 5.530% 09/27/2027	16144LAB2		0.00	596.20	596.20			
	11/25/25	11/25/25	BMWLT 2025-1 A3 DTD 06/10/2025 4.430% 06/26/2028	096912AD2		0.00	1,827.38	1,827.38			
	11/25/25	11/25/25	BMWOT 2024-A A3 DTD 06/11/2024 5.180% 02/26/2029	096919AD7		0.00	3,086.42	3,086.42			
	11/25/25	11/25/25	CHAOT 2024-5A A2 DTD 09/24/2024 4.400% 11/26/2027	16144OAB1		0.00	370.94	370.94			
	11/25/25	11/25/25	CHAOT 2025-2A A2 DTD 10/29/2025 3.910% 12/26/2028	16144MAC8		0.00	5,690.14	5,690.14			
	11/25/25	11/25/25	CHAOT 2025-1A A3 DTD 07/30/2025 4.290% 06/25/2030	16145NAC5		0.00	2,717.00	2,717.00			
	11/25/25	11/25/25	BMWOT 2025-A A2A DTD 02/12/2025 4.430% 10/25/2027	096924AB1		0.00	2,394.60	2,394.60			
	11/26/25	11/26/25	MORGAN STANLEY BANK NA (CALLABLE) DTD 05/30/2024 5.504% 05/26/2028	61690U8B9		0.00	9,356.80	9,356.80			



Managed Account Security Transactions & Interest

For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Trade	Type Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
INTEREST										
11/27/25	11/27/25	COMMONWEALTH BK AUSTR NY DTD 11/27/2024 4.577% 11/27/2026	20271RAU4		0.00	20,024.38	20,024.38			
11/29/25	11/29/25	CITIBANK NA (CALLABLE) DTD 05/29/2025 4.576% 05/29/2027	17325FBN7		0.00	22,880.00	22,880.00			
11/30/25	11/30/25	US TREASURY N/B DTD 06/01/2021 1.250% 05/31/2028	91282CCE9		0.00	31,250.00	31,250.00			
Transaction Type Sub-Total					0.00	1,018,642.32	1,018,642.32			
MATURITY										
11/07/25	11/07/25	CREDIT INDUST ET COMM NY DTD 11/08/2024 4.550% 11/07/2025	22536WJ6	2,000,000.00	2,000,000.00	0.00	2,000,000.00	0.00	0.00	
Transaction Type Sub-Total				2,000,000.00	2,000,000.00	0.00	2,000,000.00	0.00	0.00	
PAYDOWNS										
11/01/25	11/25/25	FHMS K058 A1 DTD 11/01/2016 2.340% 07/01/2026	3137BSP64	14,069.76	14,069.76	0.00	14,069.76	721.08	182.34	
11/01/25	11/25/25	FHMS K054 A2 DTD 04/01/2016 2.745% 01/01/2026	3137BNGT5	178,771.52	178,771.52	0.00	178,771.52	9,043.32	959.14	
11/01/25	11/25/25	FNA 2018-M2 A2 DTD 02/01/2018 3.026% 01/01/2028	3136B0YM2	1,456.16	1,456.16	0.00	1,456.16	41.30	33.39	
11/01/25	11/25/25	FHMS K739 A2 DTD 11/01/2020 1.336% 09/01/2027	3137F64P9	2,488.13	2,488.13	0.00	2,488.13	190.98	128.42	
11/01/25	11/25/25	FHMS K059 A2 DTD 11/01/2016 3.120% 09/01/2026	3137BSRE5	1,373.67	1,373.67	0.00	1,373.67	72.60	24.40	
11/01/25	11/25/25	FHMS K057 A2 DTD 09/01/2016 2.570% 07/01/2026	3137BRQJ7	1,985.77	1,985.77	0.00	1,985.77	129.31	35.19	
11/01/25	11/25/25	FHMS K065 A1 DTD 07/01/2017 2.864% 10/01/2026	3137F1G36	22,745.60	22,745.60	0.00	22,745.60	981.79	340.83	
11/01/25	11/25/25	FHMS K736 A2 DTD 09/01/2019 2.282% 07/01/2026	3137FNWX4	1,056.93	1,056.93	0.00	1,056.93	76.26	20.05	
11/01/25	11/25/25	FHMS KJ28 A2 DTD 02/01/2020 2.308% 10/01/2027	3137FREE7	83,662.39	83,662.39	0.00	83,662.39	3,081.76	2,280.94	



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For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
PAYDOWNS											
	11/01/25	11/25/25	FHMS K069 A2 DTD 11/01/2017 3.187% 09/01/2027	3137FBU79	1,244.98	1,244.98	0.00	1,244.98	60.21	36.34	
	11/15/25	11/15/25	TAOT 2023-D A3 DTD 11/14/2023 5.540% 08/15/2028	89239FAD4	13,751.37	13,751.37	0.00	13,751.37	1.48	0.88	
	11/15/25	11/15/25	FORDO 2025-A A2A DTD 03/25/2025 4.470% 12/15/2027	34535KAB4	172,292.06	172,292.06	0.00	172,292.06	10.20	7.86	
	11/15/25	11/15/25	BAAT 2024-1A A3 DTD 05/22/2024 5.350% 11/15/2028	09709AAC6	8,806.99	8,806.99	0.00	8,806.99	1.44	0.98	
	11/15/25	11/15/25	ALLYA 2024-1 A3 DTD 03/13/2024 5.080% 12/15/2028	02008FAC8	23,363.50	23,363.50	0.00	23,363.50	3.39	2.26	
	11/15/25	11/15/25	HAROT 2024-4 A2 DTD 10/24/2024 4.560% 03/15/2027	43816DAB1	136,328.52	136,328.52	0.00	136,328.52	9.29	5.28	
	11/15/25	11/15/25	COPAR 2024-1 A2A DTD 11/26/2024 4.610% 10/15/2027	14043NAB5	30,925.19	30,925.19	0.00	30,925.19	1.30	0.85	
	11/15/25	11/15/25	USAOT 2024-A A2 DTD 07/30/2024 5.250% 03/15/2027	90327VAB4	90,088.41	90,088.41	0.00	90,088.41	5.83	3.01	
	11/15/25	11/15/25	NAROT 2024-B A2A DTD 10/23/2024 4.510% 06/15/2027	65479WAB0	91,602.25	91,602.25	0.00	91,602.25	7.31	4.47	
	11/15/25	11/15/25	HART 2024-C A2A DTD 10/16/2024 4.530% 09/15/2027	448976AB6	63,912.22	63,912.22	0.00	63,912.22	3.88	2.47	
	11/15/25	11/15/25	TAOT 2024-A A3 DTD 01/30/2024 4.830% 10/16/2028	89238DAD0	19,008.61	19,008.61	0.00	19,008.61	3.80	2.43	
	11/15/25	11/15/25	TAOT 2024-C A2A DTD 07/30/2024 5.160% 05/17/2027	89237QAB6	23,177.41	23,177.41	0.00	23,177.41	0.22	0.10	
	11/15/25	11/15/25	TAOT 2024-D A2A DTD 10/17/2024 4.550% 08/16/2027	89239TAB8	41,992.97	41,992.96	0.00	41,992.96	2.73	1.69	
	11/15/25	11/15/25	FORDO 2024-A A2A DTD 03/19/2024 5.320% 01/15/2027	34535EAB8	24,400.97	24,400.97	0.00	24,400.97	0.86	0.36	
	11/15/25	11/15/25	WOART 2024-B A2A DTD 05/22/2024 5.480% 09/15/2027	98164HAB4	27,003.93	27,003.93	0.00	27,003.93	2.72	1.55	
	11/15/25	11/15/25	KCOT 2024-1A A2 DTD 02/21/2024 5.390% 01/15/2027	50117BAB6	55,056.16	55,056.16	0.00	55,056.16	0.72	0.25	
	11/15/25	11/15/25	WOART 2025-A A2A DTD 01/29/2025 4.490% 04/17/2028	98164YAB7	98,472.03	98,472.03	0.00	98,472.03	2.74	2.03	



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Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
PAYDOWNS											
	11/15/25	11/15/25	KCOT 2025-1A A2 DTD 02/19/2025 4.610% 12/15/2027	50117FAB7	30,589.38	30,589.38	0.00	30,589.38	3.83	2.85	
	11/15/25	11/15/25	MBART 2025-1 A2A DTD 01/23/2025 4.500% 02/15/2028	58773DAB0	158,509.12	158,509.12	0.00	158,509.12	3.82	2.71	
	11/15/25	11/15/25	TAOT 2025-A A2A DTD 01/29/2025 4.480% 11/15/2027	89240JAB7	145,243.28	145,243.28	0.00	145,243.28	6.74	4.72	
	11/15/25	11/15/25	FORDO 2023-C A3 DTD 11/21/2023 5.530% 09/15/2028	344940AD3	20,181.41	20,181.41	0.00	20,181.41	4.33	2.64	
	11/15/25	11/15/25	ALLYA 2023-1 A3 DTD 07/19/2023 5.460% 05/15/2028	02007WAC2	24,554.09	24,554.09	0.00	24,554.09	176.48	96.91	
	11/15/25	11/15/25	WOART 2024-C A2A DTD 08/20/2024 4.780% 01/18/2028	98164NAB1	67,190.79	67,190.79	0.00	67,190.79	1.43	0.83	
	11/15/25	11/15/25	CARMX 2022-2 A3 DTD 04/28/2022 3.490% 02/16/2027	14317HAC5	22,470.69	22,470.69	0.00	22,470.69	583.71	211.11	
	11/15/25	11/15/25	BAAT 2023-2A A3 DTD 11/21/2023 5.740% 06/15/2028	06054YAC1	50,668.87	50,668.87	0.00	50,668.87	0.92	0.48	
	11/15/25	11/15/25	FORDO 2024-D A2A DTD 11/22/2024 4.590% 10/15/2027	34535VAB0	42,111.04	42,111.04	0.00	42,111.04	2.06	1.39	
	11/15/25	11/15/25	NAROT 2024-A A2A DTD 05/22/2024 5.470% 12/15/2026	65479UAB4	48,732.20	48,732.20	0.00	48,732.20	0.50	0.20	
	11/15/25	11/15/25	TAOT 2024-B A2A DTD 04/30/2024 5.410% 03/15/2027	89237NAB3	38,993.79	38,993.79	0.00	38,993.79	2.80	1.35	
	11/15/25	11/15/25	HDMOT 2023-B A3 DTD 09/27/2023 5.690% 08/15/2028	41285YAC9	51,555.38	51,555.38	0.00	51,555.38	11.65	65.30	
	11/15/25	11/15/25	FORDO 2024-B A2A DTD 06/24/2024 5.400% 04/15/2027	34531OAB5	114,328.02	114,328.02	0.00	114,328.02	8.55	4.35	
	11/15/25	11/15/25	HART 2022-C A3 DTD 11/09/2022 5.390% 06/15/2027	44933DAD3	25,920.38	25,920.38	0.00	25,920.38	199.46	86.86	
	11/15/25	11/15/25	FORDO 2024-C A2A DTD 09/20/2024 4.320% 08/15/2027	34532UAB5	46,926.76	46,926.76	0.00	46,926.76	1.88	1.11	
	11/15/25	11/15/25	HART 2024-B A2A DTD 07/24/2024 5.150% 06/15/2027	44934OAB7	37,529.68	37,529.68	0.00	37,529.68	1.51	0.85	
	11/15/25	11/15/25	KCOT 2024-2A A2 DTD 06/25/2024 5.450% 04/15/2027	50117DAB2	22,233.49	22,233.49	0.00	22,233.49	2.53	1.30	



Managed Account Security Transactions & Interest

For the Month Ending **November 30, 2025**

Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type	Trade	Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
PAYDOWNS											
	11/16/25	11/16/25	GMCAR 2024-3 A2A DTD 07/10/2024 5.350% 06/16/2027	38013KAB6	51,309.57	51,309.57	0.00	51,309.57	0.13	0.00	
	11/16/25	11/16/25	GMCAR 2025-1 A2A DTD 01/15/2025 4.440% 01/18/2028	362955AB2	116,375.40	116,375.40	0.00	116,375.40	11.09	7.94	
	11/16/25	11/16/25	GMCAR 2024-2 A2A DTD 04/10/2024 5.330% 03/16/2027	379931AB4	8,232.59	8,232.57	0.00	8,232.57	0.53	0.24	
	11/16/25	11/16/25	GMCAR 2024-4 A2A DTD 10/16/2024 4.530% 10/18/2027	38014AAB7	48,246.18	48,246.18	0.00	48,246.18	2.01	1.24	
	11/16/25	11/16/25	GMCAR 2024-1 A3 DTD 01/17/2024 4.850% 12/18/2028	36268GAD7	6,280.20	6,280.20	0.00	6,280.20	1.26	0.82	
	11/16/25	11/16/25	GMCAR 2023-4 A3 DTD 10/11/2023 5.780% 08/16/2028	379930AD2	27,991.86	27,991.86	0.00	27,991.86	5.75	3.41	
	11/20/25	11/20/25	VALET 2023-2 A2A DTD 11/21/2023 5.720% 03/22/2027	92867YAB0	16,562.04	16,562.02	0.00	16,562.02	0.94	0.38	
	11/20/25	11/20/25	VALET 2025-1 A2A DTD 03/25/2025 4.510% 01/20/2028	92868MAB5	143,530.56	143,530.56	0.00	143,530.56	4.54	3.25	
	11/20/25	11/20/25	VALET 2024-1 A2A DTD 11/26/2024 4.650% 11/22/2027	92868RAB4	88,457.89	88,457.89	0.00	88,457.89	1.42	0.85	
	11/21/25	11/21/25	HAROT 2023-4 A3 DTD 11/08/2023 5.670% 06/21/2028	438123AC5	11,186.52	11,186.52	0.00	11,186.52	1.97	1.15	
	11/21/25	11/21/25	HAROT 2025-1 A2 DTD 02/11/2025 4.530% 08/23/2027	43814VAB3	257,948.87	257,948.87	0.00	257,948.87	11.22	7.82	
	11/21/25	11/21/25	HAROT 2024-3 A2 DTD 08/21/2024 4.890% 02/22/2027	43813YAB8	67,652.94	67,652.94	0.00	67,652.94	5.30	2.71	
	11/22/25	11/22/25	PFAST 2024-1A A2A DTD 12/13/2024 4.450% 01/24/2028	73328EAB7	55,477.14	55,477.14	0.00	55,477.14	4.73	3.33	
	11/25/25	11/25/25	BMWOT 2025-A A2A DTD 02/12/2025 4.430% 10/25/2027	096924AB1	83,925.44	83,925.44	0.00	83,925.44	6.42	4.62	
	11/25/25	11/25/25	CHAOT 2024-3A A2 DTD 06/27/2024 5.530% 09/27/2027	16144LAB2	56,363.50	56,363.50	0.00	56,363.50	0.49	0.20	
	11/25/25	11/25/25	CHAOT 2024-4A A2 DTD 07/30/2024 5.250% 09/27/2027	16144YAB4	37,619.94	37,619.94	0.00	37,619.94	3.52	2.11	
	11/25/25	11/25/25	CHAOT 2024-5A A2 DTD 09/24/2024 4.400% 11/26/2027	16144QAB1	23,488.38	23,488.38	0.00	23,488.38	2.09	1.35	


Managed Account Security Transactions & Interest
For the Month Ending **November 30, 2025**
Silicon Valley Clean Energy - SVCE Investment Portfolio - 4025-002 - (12517950)

Transaction Type		Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
Trade	Settle									
Transaction Type Sub-Total				3,277,424.89	3,277,424.84	0.00	3,277,424.84	15,532.13	4,603.89	
SELL										
11/12/25	11/14/25	US TREASURY N/B DTD 07/31/2024 4.375% 07/31/2026	91282CLB5	1,850,000.00	1,858,238.28	23,313.52	1,881,551.80	144.53	5,265.23	FIFO
11/19/25	11/20/25	US TREASURY N/B DTD 10/15/2024 3.875% 10/15/2027	91282CLO2	2,725,000.00	2,739,795.90	10,443.34	2,750,239.24	24,588.87	21,201.49	FIFO
11/20/25	11/20/25	BRISTOL-MYERS SQUIBB CO DTD 02/22/2024 4.950% 02/20/2026	110122ED6	230,000.00	230,496.80	2,846.25	233,343.05	616.40	512.34	FIFO
11/21/25	11/24/25	US TREASURY N/B DTD 07/31/2024 4.375% 07/31/2026	91282CLB5	100,000.00	100,441.41	1,379.08	101,820.49	3.91	286.75	FIFO
Transaction Type Sub-Total				4,905,000.00	4,928,972.39	37,982.19	4,966,954.58	25,353.71	27,265.81	
Managed Account Sub-Total					(13,027,734.17)	1,046,496.20	(11,981,237.97)	59,205.84	31,869.70	
Total Security Transactions					(\$13,027,734.17)	\$1,046,496.20	(\$11,981,237.97)	\$59,205.84	\$31,869.70	



Staff Report – Item 1d

Item 1d: Appoint SVCE Treasurer/Auditor and Board Secretary for 2026

From: Monica Padilla, CEO

Prepared by: Andrea Pizano, Sr. Executive Assistant and Board Clerk

Date: 1/14/2026

RECOMMENDATION

Staff recommends the Silicon Valley Clean Energy (SVCE) Board of Directors (“Board”) appoint Amrit Singh, SVCE Chief Financial Officer (CFO) as the Board Treasurer/Auditor and Andrea Pizano, SVCE Sr. Executive Assistant and Board Clerk, as the Board Secretary for 2026.

BACKGROUND

Pursuant to Section 4.11.3 of the [Joint Powers Agreement](#) (Agreement), the Board shall appoint a qualified person to act as Treasurer and a qualified person to serve as Auditor. The Board may appoint a qualified person to serve as both Treasurer/Auditor. The Treasurer/Auditor acts as the depository of the Authority’s funds and has custody of all the money of the Authority. The Treasurer/Auditor reports directly to the Board the performance of their duties as Treasurer/Auditor and must comply with the requirements for treasurers of general law cities. Government Code Section 6505.5 and Section 6 of the Agreement further specifies the duties and obligations of the Treasurer/Auditor.

Pursuant to Section 4.11.2 of SVCE’s Agreement, the Board of Directors of the Authority shall appoint a Secretary. The Secretary is responsible for keeping the minutes of all Board meetings (ensuring the minute meetings are completed and retained) and keeping other official records of the Authority. The secretary is not required to be a member of the Board.

The Treasurer/Auditor and Secretary were last appointed in January 2025.

ANALYSIS & DISCUSSION

CFO Amrit Singh was first appointed to serve as the Treasurer/Auditor in December 2020; he has been reappointed annually since then. Prior to CFO Singh holding this position, the Director of Finance and Administration served as the Treasurer/Auditor since 2017. Staff is requesting the Board appoint CFO Singh to continue in this role for 2026.

SVCE Sr. Executive Assistant and Board Clerk Andrea Pizano has served as the Board Secretary since 2017. Staff recommends that she continue serving in this capacity for 2026.

STRATEGIC PLAN

N/A

ALTERNATIVE

The Board can elect to appoint other individuals for Board Treasurer/Auditor and/or Board Secretary.

FISCAL IMPACT

No fiscal impact as a result of the appointments.



Staff Report – Item 1e

Item 1e: Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Titles and Change the Titles of Power Settlements and Compliance Analyst to Power Settlements Analyst, and Regulatory and Compliance Manager to Compliance Manager as Designated Positions for Filing Statements of Economic Interests

From: Monica Padilla, CEO

Prepared by: Nik Zanotto, Director of Operations
 Michael Callahan, General Counsel
 Andrea Pizano, Sr. Executive Assistant and Board Clerk

Date: 1/14/2026

RECOMMENDATION

Adopt Resolution 2026-02 amending the Silicon Valley Clean Energy (SVCE) Conflict of Interest Code (Code) to add the following titles: "Decarb Investments Lead", "Decarbonization and Community Strategies Lead", "Demand Flexibility Manager", "Information Security Manager", "Manager of Technical Decarb Strategy", "Marketing Manager", "Principal Regulatory Advisor", and "Senior Finance and Data Analyst", and change the titles of "Power Settlements and Compliance Analyst" to "Power Settlements Analyst" and "Regulatory and Compliance Manager" to "Compliance Manager".

BACKGROUND

Shortly after the formation of SVCE, the Board of Directors adopted a Code as required by the Political Reform Act, commencing at Government Code Section 81000. The Code lists the positions within the Authority that are required to file statements of economic interests (Form 700). As a joint powers authority with members located entirely within Santa Clara County, the County Board of Supervisors is the conflict code reviewing body that is required to approve all changes to the conflict-of-interest code. County Counsel has advised that when positions are added or removed from the conflict code, a new resolution must be adopted approving a new conflict of interest code with the amended, added or removed position(s).

At the September 8, 2021 Board meeting, the Board of Directors adopted Resolution 2021-22 approving the creation of a personnel system to insure equitable and uniform policies and procedures for administering personnel matters in compliance with applicable laws; designating the Chief Executive Officer (CEO) as Personnel Officer; and delegating authority to the CEO to carry out all duties necessary to implement the personnel system.

The last Code amendment was approved at the October 2025 Board of Directors meeting to change the title of "Chief Financial Officer and Director of Administrative Services" to only reflect "Chief Financial Officer", change the title of "Technology Services Manager" to "Manager of IT", remove "Senior Manager of IT & Administrative Services" and "Manager of Technology & Administrative Services", and add "Associate Financial Analyst" and "Director of Operations" positions.

ANALYSIS & DISCUSSION

In November 2025, SVCE had various promotions following the annual performance review cycle. Those promotions included the creation of the following positions:

- Decarbonization and Community Strategies Lead
- Information Security Manager

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- Marketing Manager
- Principal Regulatory Advisor

As a result of performing an annual review of SVCE’s Code, the following positions already exist and should also be included in the code:

- Decarb Investments Lead
- Demand Flexibility Manager
- Manager of Technical Decarb Strategy
- Senior Finance and Data Analyst

The above eight positions will need to be added to SVCE’s Code.

The title changes for “Power Settlements and Compliance Analyst” to “Power Settlements Analyst” and “Regulatory and Compliance Manager” to “Compliance Manager” were done to better align with roles in the Power Resources department.

In summary, SVCE staff feel the following positions should be added or have title changes:

The following positions are proposed to be added to the Conflict of Interest Code:

Designated Position	Assigned Disclosure Category
Decarb Investments Lead	2
Decarbonization and Community Strategies Lead	2
Demand Flexibility Manager	2
Information Security Manager	2
Manager of Technical Decarb Strategy	2
Marketing Manager	2
Principal Regulatory Advisor	2
Senior Finance and Data Analyst	2

The following position titles are proposed to be changed in the Conflict of Interest Code:

Existing Designated Position	Proposed New Position
Regulatory and Compliance Manager	Compliance Manager
Power Settlements and Compliance Analyst	Power Settlements Analyst

In accordance with the requirements of the Political Reform Act and the County of Santa Clara, a new conflict of interest code must be adopted by resolution which includes the newly created or identified positions as well as any changes to the existing Conflict of Interest Code. The attached resolution amends Appendix A to SVCE’s Code to reflect the addition of “Decarb Investments Lead”, “Decarbonization and Community Strategies Lead”, “Demand Flexibility Manager”, “Information Security Manager”, “Manager of Technical Decarb Strategy”, “Marketing Manager”, “Principal Regulatory Advisor”, and “Senior Finance and Data Analyst” and title changes for “Power Settlements and Compliance Analyst” to “Power Settlements Analyst”, and “Regulatory and Compliance Manager” to “Compliance Manager”.

STRATEGIC PLAN

Not applicable.

ALTERNATIVES

None.

FISCAL IMPACT

There is no fiscal impact as a result of adding positions to SVCE’s Conflict of Interest Code.

ATTACHMENT

1. Resolution 2026-02 Amending SVCE Conflict of Interest Code to Add Multiple Titles and Change the Titles of Power Settlements and Compliance Analyst to Power Settlements Analyst, and Regulatory and Compliance Manager to Compliance Manager as Designated Positions for Filing Statements of Economic Interests

RESOLUTION NO. 2026-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY'S CONFLICT OF INTEREST CODE TO ADD MULTIPLE TITLES AND CHANGE THE TITLES OF POWER SETTLEMENTS AND COMPLIANCE ANALYST TO POWER SETTLEMENTS ANALYST, AND REGULATORY AND COMPLIANCE MANAGER TO COMPLIANCE MANAGER AS DESIGNATED POSITIONS FOR FILING STATEMENTS OF ECONOMIC INTERESTS

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

WHEREAS, the Political Reform Act, Government Code Section 81000, *et seq.*, (the "Political Reform Act") requires each public agency in California, including the Authority, to adopt and promulgate a conflict of interest code; and

WHEREAS, Government Code Section 87306 requires each public agency in California to amend its conflict of interest code when change is necessitated by a change in circumstances, including the creation of new positions and relevant changes to the duties assigned to existing positions; and

WHEREAS, the Board of Directors of the Authority has adopted a conflict of interest code, and has amended this code as appropriate due to changed circumstances, with the most recent code adopted by Resolution 2025-21; and

WHEREAS, the Board of Directors, after consultation with the County of Santa Clara as its code reviewing body, desires to amend the list of designated positions in Appendix A by adding Decarb Investments Lead, Decarbonization and Community Strategies Lead, Demand Flexibility Manager, Information Security Manager, Manager of Technical Decarb Strategy, Marketing Manager, Principal Regulatory Advisor, and Senior Finance and Data Analyst, and retitling Power Settlements and Compliance Analyst to Power Settlements Analyst, and Regulatory and Compliance Manager to Compliance Manager.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Authority rescinds Resolution No. 2025-21 and adopts the following attached Conflict of Interest Code including its Appendices of Designated Positions and Disclosure Categories.

BE IT FURTHER RESOLVED that The Board of Directors of the Authority hereby directs the Secretary of the Board to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years following notice and instructions from the County of Santa Clara as the code-reviewing body for the Authority, in accordance with the requirements of Government Code Sections 87306 and 87306.5. Future revisions to the Conflict of Interest Code should reflect changes in employee or official

designations. If no revisions to the Code are required, the Authority shall submit a response as indicated in the instructions provided by the County of Santa Clara no later than October 1st of the same year, stating that amendments to the Authority’s Conflict of Interest Code are not required.

ADOPTED AND APPROVED this 14th day of January 2026, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Scozzola				
City of Cupertino	Director Wang				
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 Barbadillo				
City of Monte Sereno	Director Mekechuk				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Showalter				
County of Santa Clara	Director Lee				
City of Saratoga	Director Page				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Clerk

SILICON VALLEY CLEAN ENERGY AUTHORITY CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code § 81000, *et seq.*, hereinafter referred to as the Act) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission (“FPPC”) has adopted a regulation (2 California Code of Regulations § 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency’s code. After public notice and hearing, the standard code may be amended by the FPPC to conform to amendments in the Act. Therefore, the terms of 2 California Code of Regulations § 18730 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference. This regulation and the text here designating positions and establishing disclosure categories shall constitute the conflict of interest code of the Silicon Valley Clean Energy Authority (“Authority”).

The most current version of 2 Cal. Code of Regs. Section 18730 is available on the website of the Fair Political Practices Commission (<https://www.fppc.ca.gov>).

Individuals holding a designated position shall file their Statements of Economic Interests with the Authority’s Filing Official, which will make the Statements available for public inspection and reproduction subject to Government Code section 81008. If Statements are received in signed paper format, the Authority’s Filing Official shall make and retain a copy and forward the original Statements to the Filing Officer, the County of Santa Clara Clerk of the Board of Supervisors. If Statements are electronically filed using the County of Santa Clara’s Form 700 e-filing system, both the Authority’s Filing Official and the County of Santa Clara Clerk of the Board of Supervisors will receive access to the e-filed Statements simultaneously.

**SILICON VALLEY CLEAN ENERGY AUTHORITY
CONFLICT OF INTEREST CODE**

APPENDIX "A"

DESIGNATED POSITIONS

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
Member of Board of Directors	1
Alternate Member of Board of Directors	1
Audit Committee Member	2
Chief Executive Officer	1
Chief Financial Officer	1
Finance and Administration Committee Member	2
General Counsel	1
Administrative Services Manager	2
Associate Financial Analyst	2
Associate Legislative Analyst	2
Associate Manager of Decarbonization Programs	2
Associate Power Analyst	1
Associate Power Resources Planner	1
Communications Manager	2
<u>Regulatory and Compliance Manager</u>	<u>2</u>
<u>Decarb Investments Lead</u>	<u>2</u>
<u>Decarbonization and Community Strategies Lead</u>	<u>2</u>
<u>Demand Flexibility Manager</u>	<u>2</u>
Deputy Director of Administrative Services	2

Deputy Director of Marketing and Communications	2
Deputy Director of Power Resources	1
Director of Customer Success	2
Director of Decarbonization Policy and Community Strategies	2
Director of Energy Services & Community Relations	2
Director of Government and Legislative Affairs	2
Director of Human Resources	2
Director of Operations	2
Director of Power Resources	1
Director of Regulatory & Legislative Policy	2
Director of Regulatory, Policy and Planning	2
Director of Risk Management and Analytics	1
Director of Strategic Development	2
Energy Services Manager	2
Energy Trading Planner	1
Financial Analyst	2
Human Resources Generalist	2
<u>Information Security Manager</u>	<u>2</u>
Management Analyst	2
Manager of Data and Analytics	2
Manager of Decarbonization Programs	2
Manager of IT	2
Manager of Finance	2
<u>Manager of Technical Decarb Strategy</u>	<u>2</u>
<u>Marketing Manager</u>	<u>2</u>
Policy Analyst	2

Power Analyst	1
Power Data Analyst	1
Power Resources Manager	1
Power Resources Planner	1
Power Contracts & Settlements Manager	1
Power Settlements & Compliance Analyst	1
Power Settlements Planner	1
Principal Policy Analyst	2
Principal Power Analyst	1
<u>Principal Regulatory Advisor</u>	<u>2</u>
Programs Marketing Manager	2
Rates Manager	2
Regulatory Analyst	2
Regulatory and Compliance Manager	2
Risk Controls Project Manager	2
Senior Data Analyst	2
Senior Data Engineer	2
<u>Senior Finance and Data Analyst</u>	<u>2</u>
Senior Financial Analyst	2
Senior Government Affairs Manager	2
Senior Management Analyst	2
Senior Manager of Communications	2
Senior Manager of Energy Policy and Regulatory Analysis	2
Senior Manager of Decarbonization Programs	2
Senior Manager of Power Resources	1
Senior Manager of Public Sector Services	2

Senior Policy Analyst	2
Senior Power Analyst	1
Senior Power Resources Planner	1
Senior Quantitative Analyst	2
Senior Rates Analyst	2
Senior Regulatory Analyst	2
Senior Regulatory Analyst & Associate General Counsel	1
Senior Risk Manager	2
Wholesale Energy Markets Manager	1
Wholesale Energy Markets Planner	1
Consultant	3
Newly Created Position	*

* Newly Created Position

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority's conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular newly created position, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

As soon as the Authority has a newly created position that must file Statements of Economic Interests, the Authority's Filing Official shall contact the County of Santa Clara Clerk of the Board of Supervisors Form 700 division to notify it of the new position title to be added in the County's electronic Form 700 record management system, known as eDisclosure. Upon this notification, the Clerk's office shall enter the actual position title of the newly created position into eDisclosure and the Authority's Filing Official shall ensure that the name of any individual(s) holding the newly created position is entered under that position title in eDisclosure.

Additionally, within 90 days of the creation of a newly created position that must file Statements of Economic Interests, the Authority shall update this conflict-of-interest code to add the actual position title in its list of designated positions and submit the amended conflict of interest code to the County of Santa Clara Office of the County Counsel for code-reviewing body approval by the County Board of Supervisors. (Gov. Code Section 87306.)

SILICON VALLEY CLEAN ENERGY AUTHORITY CONFLICT OF INTEREST CODE

APPENDIX "B"

DISCLOSURE CATEGORIES

Designated positions must report financial interests in accordance with the assigned disclosure categories.

Category 1: Persons in this category shall disclose:

(a) investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority; and

(b) all interests in real property located: in whole or in part within the jurisdiction of the Silicon Valley Clean Energy Authority, or within two miles of the borders of any of the parties to the Joint Powers Agreement for the Authority, or within two miles of any land owned or used by the Authority.

Category 2: Persons in this category shall disclose investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority.

Category 3: Each Consultant, as defined for purposes of the Political Reform Act and applicable regulations¹, shall disclose pursuant to the broadest disclosure category in the Authority's conflict of interest code subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such a written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of

¹ As defined in FPPC Regulation 18700.3, "consultant" means an individual who (1) makes governmental decisions, such as whether to approve a rate, rule, or regulation; to issue, deny, suspend, or revoke any permit, license, application, certificate or similar authorization; to adopt or approve a plan, design, report, study; or to adopt or approve policies, standards, or guidelines for the Authority; (2) serves in a staff capacity with the Authority, and in that capacity participates in making governmental decisions by providing information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review; or (3) performs the same or substantially all the same duties for the Authority that would otherwise be performed by an individual holding a designated position in this Code.

disclosure requirements. The Chief Executive Officer's written determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.



Staff Report – Item 1f

Item 1f: Authorize the Chief Executive Officer to Finalize and Execute Agreement with Beals Martin and Associates, Inc. to Support the Development and Construction of SVCE’s New Headquarters in the Amount of \$6,554,435

From: Monica Padilla, CEO

Prepared by: Zoe Elizabeth, Director of Decarbonization Policy & Community Strategy

Date: 1/14/2026

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy (SVCE) Board of Directors (“Board”) approve and authorize the Chief Executive Officer (CEO) to finalize and execute a contract with Beals Martin and Associates, Inc. in the amount of \$6,554,435 and to grant the CEO the ability to amend this contract up to 10% for a maximum of \$7,209,879 should essential cost changes arise to support the development and construction of SVCE’s new headquarters at 298 S. Sunnyvale Avenue. The contract will support the development and construction of SVCE’s new headquarters at 298 S. Sunnyvale Avenue and is attached in substantially final form.

BACKGROUND

In February 2025, SVCE purchased a 28,000-square-foot, two-story building that will serve as the agency’s new headquarters. The building was renovated in 2019 but is a shell and SVCE needs to complete the interior build-out prior to occupying the building. SVCE conducted two in-person feedback sessions with staff, the Board, and members of the public to ensure their values, priorities, and needs are considered during the building’s design process. The first feedback session entailed an in-person exercise with all staff to discuss the office space. The takeaways from that session included incorporating modular office features for a changing workforce and designing an effective space for individual and collaborative productivity. The second feedback session was with the Board of Directors and members of the public to solicit input on priorities and values for the Board Chamber and community space while maintaining a focus on financial feasibility. The takeaways from that session included creating an inviting and welcoming Board Chamber for the Board and the public.

Staff have been working diligently to prioritize the office space and Board Chamber with the goal of relocating operations by summer 2026. The building is phased into two parts: Phase 1) the office space and Board Chamber, and Phase 2) the community space. Staff will request additional time to assess the needs of the community space at the January Executive Committee Meeting.

In November 2025, SVCE selected and contracted with a vendor to provide elevator modernization and maintenance services. Work is currently underway to replace outdated equipment, make necessary modifications to meet current building codes and standards, and service the elevator for a period of three years.

Agenda Item: 1f**Agenda Date: 1/14/2026**

Related to Phase 1, staff and the project management team from Cumming Group released a Request for Pre-Qualification of Bidding Commencing with Forthcoming Public Work Bid on September 18, 2025 ([RFO HERE](#)). The purpose of the pre-qualification process is to ensure only contractors with appropriate experience, financial capacity, safety record, and technical capability are invited to bid for the project itself. Staff received nine proposals on October 16, 2025, and identified four bidders who met the qualification criteria. On November 24, 2025, SVCE and Cumming Group then released the Notice Inviting Bids for SVCE Headquarters, which the prequalified contractors could apply for. Staff received four proposals on December 19, 2025 and after thorough review determined Beals Martin and Associates, Inc. to be the lowest responsible bidder with a responsive bid. SVCE staff shared this decision with all bidders and received one protest related to listing subcontractors. SVCE legal counsel reviewed the protest in detail and determined the claims were not valid and that Beals Martin and Associates, Inc. was the lowest responsible bidder with a responsive bid. Thus, in accordance with Public Contracting code, staff is requesting board approval to execute a contract with Beals Martin and Associates, Inc.

ANALYSIS & DISCUSSION

As part of the public works project process, staff and Cumming Group conducted the pre-qualification selection process from September 18, 2025, through October 16, 2025, and received responses from nine bidders. The key evaluation criteria included:

- Provide information on the type, size, and other information about the organization
- Provide additional information on the organization and structure
- Answer essential criteria questions
- Answer prequalifying criteria questions
- Provide six project references

Staff and Cumming Group reviewed the completeness of all proposals and scored them. Four firms were shortlisted as qualifying contractors. All four qualified bidders have demonstrated sufficient relevant experience, the capability to successfully execute the project on time and within budget, and an acceptable safety, legal and financial accounting history.

In November 2025, staff and Cumming Group released the Notice Inviting Bids for SVCE Headquarters. As a Public Agency, SVCE must comply with California Public Contracting Requirements and select the lowest bidder whose proposal meets all the stipulated and mandated criteria.

The scope of work involves the interior buildout of the two-story building, which includes construction of open/private office space, open/private lounge areas, meeting rooms, storage space, IT & security storage room, kitchen, a Board Chamber, and restrooms. The work may include minimal environmental remediation, minor roofing, analysis and completion of heat, ventilation, and air conditioning systems, including upgrade as needed, and lighting replacement with controls. The building will serve many functions and require modular, adaptable features for various users. The space will have three functions:

1. working space for staff in a hybrid environment,
2. community space (will be constructed at a later time), and
3. SVCE Board of Directors Chamber

SVCE has contracted with SERA Architects to provide architectural and engineering design for this project. Staff and SERA have developed a cost-conscious design by incorporating a minimal number of offices and conference rooms, minimizing the movement of plumbing, maintaining existing bathrooms, reusing existing SVCE furniture and carpet wherever possible, and installing basic finishes.

Additionally, the design includes several sustainable initiatives, including upgrades to the insulation within the building envelope, a highly energy-efficient and adaptable heating, ventilation, and air conditioning system that can adjust depending on the building occupancy and locally sourced materials when possible.

Agenda Item: 1f**Agenda Date: 1/14/2026**

Cumming Group is SVCE's representative and will provide construction project management services.

STRATEGIC PLAN

Expanding the office falls under Strategic Focus Area #5, Attract & Retain Employees.

ALTERNATIVE

The Board may elect not to execute a contract with the lowest responsible, qualified bidder. SVCE then has the option to either cancel the project in its entirety or re-start the contractor selection process. Staff does not recommend re-starting the contractor selection process as this will delay project completion by at least four months, resulting in additional costs to SVCE and inability to move into the new headquarters as planned in mid-2026.

FISCAL IMPACT

The Board of Directors approved \$20 million to support the purchase and development of SVCE's new headquarters in the March 2024 Board of Directors meeting ([SVCE Board of Directors meeting, March 13, 2025, Item 4](#)). The Board subsequently approved an additional \$5.5 million for the budget in the December 2025 Board of Directors meeting ([SVCE Board of Directors meeting, December 10, 2025, Item 5](#)). This contract is a part of the existing approved budget, and the newly adopted increased budget inclusive of the 10 percent contingency requested for a total not to exceed of \$7,209,879.

ATTACHMENTS

1. Agreement with Beals Martin and Associates Inc.

CHECKLIST FOR EXECUTION OF CONTRACT

TO BE SUBMITTED BY SUCCESSFUL BIDDER:

- _____ Two (2) executed copies of the Contract
- _____ Evidence satisfactory to SVCE indicating the capacity of the person(s) signing the Contract to bind the Contractor
- _____ Payment Bond in amount of the Contract
- _____ Performance Bond in amount of the Contract
- _____ Workers' Compensation Certificate
- _____ Liability insurance certificate in the amounts specified in Section 5-4.2 of the General Provisions, naming SVCE, et al as additional insureds
- _____ Automobile insurance certificate in the amount specified in Section 5-4.4 of the General Provisions, naming SVCE, et al as additional insureds
- _____ Copy of city business license
- _____ Additional insured endorsement – comprehensive general liability
- _____ Additional insured endorsement – automobile liability
- _____ Additional insured endorsement – excess liability

CONTRACT
SVCE CONTRACT FOR

THIS CONTRACT ("Contract") is made and entered this **January 7th 2026** ("Effective Date"), by and between SVCE, a California municipal corporation ("SVCE") and **Beals Martin & Associates, Inc., a California corporation** ("Contractor"). Contractor's California State Contractor's license number is **396189; Class A,B**. Contractor's DIR registration number is **100000570**.

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Contract Documents. The Contract Documents consist of this Contract, the Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying the Bid and any post-Bid documentation submitted before the Notice of Award), the Bonds, permits from regulatory agencies with jurisdiction, General Provisions, Special Provisions, Plans, Standard Plans, Standard Specifications, Reference Specifications, Addenda, Change Orders, and Supplemental Agreements. The Contract Documents are attached hereto and incorporated herein by reference.
2. Scope of Services. Contractor shall perform the Work in a good and workmanlike manner for the project identified as SVCE ("Project"), as described in this Contract and in the Contract Documents.
3. Compensation. In consideration of the services rendered hereunder, SVCE shall pay Contractor a not to exceed amount of **six million five hundred fifty-four thousand four hundred thirty-five dollars (\$6,554,435.00)** in accordance with the prices as submitted in the Bid.
4. Incorporation by Reference. All of the following documents are attached hereto and incorporated herein by this reference: Workers' Compensation Certificate of Insurance, Additional Insured Endorsement (Comprehensive General Liability), Additional Insured Endorsement (Automobile Liability), and Additional Insured Endorsement (Excess Liability).
5. Antitrust Claims. In entering into this Contract, Contractor offers and agrees to assign to SVCE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. § 15) or under the Cartwright Act (Business and Professions Code Section 16700 *et seq.*) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time SVCE tenders final payment to Contractor without further acknowledgment by the parties.
6. Prevailing Wages. SVCE and Contractor acknowledge that the Project is a public work to which prevailing wages apply.
7. Workers' Compensation. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by signing this Contract, the Contractor certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers'

compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract.”

8. Titles. The titles used in this Contract are for convenience only and shall in no way define, limit or describe the scope or intent of this Contract or any part of it.

9. Authority. Any person executing this Contract on behalf of Contractor warrants and represents that he or she has the authority to execute this Contract on behalf of Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

10. Entire Agreement. This Contract, including the Contract Documents and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between SVCE and Contractor. This Contract supersedes all prior oral or written negotiations, representations or agreements. This Contract may not be modified or amended, nor any provision or breach waived, except in a writing signed by both parties that expressly refers to this Contract.

11. Counterparts. This Contract may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

SVCE

By: _____

("CONTRACTOR")

By: _____

By: _____

Bond No. _____

**PAYMENT BOND
(LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS SVCE (" SVCE"), State of California, has awarded to Beals Martin & Associates, Inc.

("Principal")

(Name and address of Contractor)

a contract (the "Contract") for the Work described as follows:

(Project name)

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of the Work, to file a good and sufficient payment Bond with SVCE to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto SVCE and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of

Dollars (\$) _____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this Work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this Bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by SVCE in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code

Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the Specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

*Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. **DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.** Surety companies executing Bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*

Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS SVCE (" SVCE"), has awarded to

(Name and address of Contractor) ("Principal")

a contract (the "Contract") for the Work described as follows:

(Project name)

WHEREAS, Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto SVCE in the penal sum of

Dollars (\$) _____), this amount being not less than the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the Contract and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless SVCE, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by SVCE in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. Surety hereby waives any statute of limitations as it applies to an action on this Bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or of the Work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the specifications. Surety hereby waives the provisions of California

Civil Code Sections 2845 and 2849. SVCE is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

*Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. **DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.** Surety companies executing Bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*

**WORKERS' COMPENSATION
CERTIFICATE OF INSURANCE**

WHEREAS, SVCE (" SVCE") has required certain insurance to be provided by:

NOW THEREFORE, the undersigned insurance company does hereby certify that it has issued the policy or policies described below to the following named insureds and that the same are in force at this time:

1. This certificate is issued to:

SVCE

_____, California _____

The insureds under such policy or policies are:

2. Workers' Compensation Policy or Policies in a form approved by the Insurance Commissioner of California covering all operations of the named insureds as follows:

<u>Policy Number</u>	<u>Effective Date</u>	<u>Expiration Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

By: _____
Its Authorized Representative

GENERAL PROVISIONS

SECTION 0. GENERAL PROVISIONS DEFINED

0-1 STANDARD SPECIFICATIONS

The 2021 edition of “Standard Specifications for Public Works Construction” (“Standard Specifications”), as amended by the Contract Documents, is incorporated into the Contract Documents by this reference. The Work described herein shall be done in accordance with the provisions of the Standard Specifications, as amended by the Contract Documents.

0-2 NUMBERING OF SECTIONS

The number of sections and subsections in these General Provisions are compatible with the numbering in the Standard Specifications.

0-3 SUPPLEMENTATION OF STANDARD SPECIFICATIONS

The Sections that follow supplement, but do not replace, the corresponding provisions in Part 1 (General Provisions) of the Standard Specifications, except as otherwise indicated herein. In the event of any conflict between the Standard Specifications and these General Provisions, these General Provisions shall control.

SECTION 1. GENERAL, TERMS, DEFINITIONS, ABBREVIATIONS, UNITS OF MEASURE, AND SYMBOLS

1-2 TERMS AND DEFINITIONS

Whenever in the Standard Specifications or in the Contract Documents the following terms are used, they shall be understood to mean the following:

Agency – SVCE.

Board – SVCE Board.

Contract Documents – As defined in Standard Specifications Section 1-2, but also including these General Provisions.

Engineer – SVCE Engineer, acting either directly or through properly authorized agents. Such agents shall act within the scope of the particular duties entrusted to them.

Inspector – An authorized representative of SVCE, assigned by SVCE to make inspections of Work performed by or materials supplied by the Contractor.

Laboratory – A laboratory authorized by SVCE to test materials and Work involved in the Contract.

Notice of Completion – The notice authorized by Civil Code Section 9204.

Project – See Work.

Submittal – Any drawing, calculation, specification, product data, samples, manuals, requests for substitutes, spare parts, photographs, survey data, traffic control plans, record drawings, Bonds or similar items required to be submitted to SVCE under the terms of the Contract.

1-3.3 Institutions

The institutions listed in Section 1-3.3 of Part 1 of the Standard Specifications shall be supplemented by the list below:

<u>Abbreviation</u>	<u>Word or Words</u>
AAN	American Association of Nurserymen
AGCA	Associated General Contractors of America
APWA	American Public Works Association
CRSI	Concrete Reinforcing Steel Institute
CSI	Construction Specifications Institute
NEC	National Electric Code
NFPA	National Fire Protection Association
SSS	State of California Standard Specifications, Latest edition, Department of Transportation
SSP	State of California Standard Plans, Latest edition, Department of Transportation

1-7.2 CONTRACT BONDS

The Faithful Performance Bond shall remain in force until the date of recordation of the Notice of Completion and the end of all warranty periods set forth in the Contract Documents. The Material and Labor Bond shall remain in force until expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and until the expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1771.2.

All Bonds must be submitted using the required forms, which are in the Contract Documents, or on any other form approved by SVCE Attorney.

SECTION 2. SCOPE OF THE WORK

2-2 PERMITS

Before starting any construction work, the Contractor will be required to obtain all necessary permits from SVCE, which may include obtaining a no fee encroachment permit for Work within the public right-of-way, as well as all other permits required from all other agencies. Should this Project require construction of trenches or excavations which are five (5) feet or deeper and into which a person is required to descend, the Contractor shall obtain a Cal/OSHA permit and furnish SVCE with a copy before Work can commence on this Project. Contractor shall bear all cost for fees for all agencies except for SVCE's permit fees.

2-4 COOPERATION AND COLLATERAL WORK

The Contractor shall be responsible for coordinating all Work with SVCE's street sweeping, trash pick-up, and street maintenance contractors, emergency services departments, utility companies' crews, and others when necessary. Payment for conforming to these requirements shall be included in other items of Work, and no additional payment shall be made thereof.

2-5.4 Haul Routes

Subsection 2-5.4 of Part 1 of the Standard Specifications shall be deleted and replaced as follows:

The Contractor must obtain SVCE Engineer's approval before using any haul routes. Further detail requirements for haul traffic are delineated in the Special Provisions.

2-7 CHANGES INITIATED BY THE AGENCY

2-7.1 General.

SVCE reserves the right, without notice to the Surety, to increase or decrease the quantity of any item or portion of the Work described in the Contract Documents or to alter or omit portions of the Work so described, as may be deemed necessary or expedient by SVCE Engineer, without in any way making the Contract void. Such increases, alterations or decreases of Work shall be considered and treated as though originally contracted for, and shall be subject to all the terms, conditions and provisions of the original Contract. The Contractor shall not claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease, alteration or omission of any kind of Work to be done.

2-8 EXTRA WORK

New and unforeseen work will be classified as Extra Work only when the Work is not covered and cannot be paid for under any of the various items or combination of items for which a Bid price appears on the Bid. The Contractor shall not do any Extra Work except upon written order from SVCE Engineer.

SECTION 3. CONTROL OF THE WORK

3-1 ASSIGNMENT

Any purported assignment without written consent of SVCE shall be null, void, and of no effect, and the Contractor shall hold harmless, defend and indemnify SVCE and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from or relating to any unauthorized assignment.

If SVCE opts to consent to assignment, SVCE's consent shall be contingent upon: (1) a letter from the Surety agreeing to the assignment and assigning all of the Bonds to the assignee without any reduction, or the assignee supplying all new Bonds in the amounts originally required under the Contract Documents; and (2) the assignee supplying all of the required insurance in the amounts required in the Contract Documents. Until the Surety assigns all of the Bonds or the assignee supplies all of the new Bonds, and until the assignee supplies all of the required insurance, an assignment otherwise consented to in writing by SVCE shall not be effective. Even

if SVCE consents to assignment, no assignment shall relieve the Contractor of liability under the Contract.

3-5 INSPECTION

The Contractor shall arrange and pay for all off-site inspection of the Work required by any ordinance or governing authorities. The Contractor shall also arrange and pay for other inspections, including tests in connection therewith, as may be assigned or required.

3.7 CONTRACT DOCUMENTS

3-7.1 General

In addition to the requirements under Section 3-7.1 in the Standard Specifications, the Contractor shall maintain a control set of Plans and Specifications on the Project site at all times. All final locations determined in the field, and any deviations from the Plans and Specifications, shall be marked in red on the control set to show the as-built conditions. This control set of Plans shall also be edited for all Addenda, Requests for Information, Change Orders, field changes not involving cost, and any other variation that occurred during construction. Upon completion of all Work, the Contractor shall return the control set to SVCE Engineer. Final payment will not be made until this requirement is met.

Where a work feature is shown on the drawings or identified in the Specifications but is not specifically indicated as an item in the Bid sheets, and there is no ambiguity regarding the requirement to construct, install, or construct and install that work feature, the Contractor is required to complete the work feature. All costs to the Contractor for constructing, installing, or both constructing and installing such a work feature shall be included in the Bid.

3-7.2 Precedence of the Contract Documents

With regard to Section 3-7.2 in the Standard Specifications, the order of precedence shall be as follows:

1. Permits issued by regulatory agencies with jurisdiction.
2. Change Orders and Supplemental Agreements, whichever occurs last.
3. Contract/Agreement.
4. Addenda.
5. Notice Inviting Bids.
6. Instructions to Bidders.
7. Bid/Proposal.
8. Special Provisions.
9. General Provisions.
10. Plans.
11. Standard Plans.
12. Standard Specifications.
13. Reference Specifications.

3-9 SUBSURFACE DATA

If SVCE or its consultants have made investigations of subsurface conditions in areas where the Work is to be performed, such investigations shall be deemed made only for the purpose of study

and design. If a geotechnical or other report has been prepared for the Project, the Contractor may inspect the records pertaining to such investigations subject to and upon the conditions hereinafter set forth. The inspection of the records shall be made in the office of SVCE Engineer. It is the Contractor's sole responsibility to determine whether such investigations exist, and SVCE makes no affirmative or negative representation concerning the existence of such investigations.

The records of any such investigations are made available solely for the convenience of the Contractor. It is expressly understood and agreed that SVCE, SVCE Engineer, their agents, consultants or employees assume no responsibility whatsoever with respect to the sufficiency or accuracy of any investigations, the records thereof, and the interpretations set forth therein. No warranty or guarantee is expressed or implied that the conditions indicated by any such investigations or records are representative of those existing in the Project area. The Contractor agrees to make such independent investigations and examination as necessary to be satisfied of the conditions to be encountered in the performance of the Work.

The Contractor represents that it has studied the Plans, Specifications and other Contract Documents, and all surveys and investigation reports of subsurface and latent physical conditions, has made such additional surveys and investigations as necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents, and that it has correlated the results of all such data with the requirements of the Contract Documents. No claim of any kind shall be made or allowed for any error, omission or claimed error or omission, in whole or in part, of any geotechnical exploration or any other report or data furnished or not furnished by SVCE.

3-10 SURVEYING

3-10.1 General

The Contractor shall verify all dimensions on the drawings and shall report to SVCE any discrepancies before proceeding with related Work. The Contractor shall perform all survey and layout Work per the benchmark information on the Project Plans. All surveying Work must conform to the Professional Land Surveyors' Act (Business and Professions Code Section 8700 *et seq*). All Project surveying notes and "cut-sheets" are to be provided to SVCE after the completion of each surveying activity and all final surveying notes shall be provided before final payment to the Contractor.

Construction stakes shall be set and stationed by Contractor at its expense. Unless otherwise indicated in the Special Provisions, surveying costs shall be included in the price of items bid. No separate payment will be made. Re-staking and replacement of construction survey markers damaged as a result of the Work, vandalism, or accident shall be at the Contractor's expense.

3-11 CONTRACT INFORMATION SIGNS

The names, addresses and specialties of the Contractor, Subcontractors, architects or engineers may not be displayed on any signage within the public right-of-way. This signage prohibition includes advertising banners hung from truck beds or other equipment.

3-12 WORKSITE MAINTENANCE

3-12.1 General.

Clean-up shall be done as Work progresses at the end of each day and thoroughly before weekends. The Contractor shall not allow the Work site to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction operation. Materials which need to be disposed shall not be stored at the Project site, but shall be removed by the end of each Working Day. If the job site is not cleaned to the satisfaction of SVCE Engineer, the cleaning will be done or contracted by SVCE and shall be back-charged to the Contractor and deducted from the Contract Price.

The Contractor shall promptly remove from the vicinity of the completed Work, all rubbish, debris, unused materials, concrete forms, construction equipment, and temporary structures and facilities used during construction. Final acceptance of the Work by SVCE will be withheld until the Contractor has satisfactorily complied with the foregoing requirements for final clean-up of the Project site.

3.12.4 Storage of Equipment and Materials.

3-12.4.1 General

The Contractor shall make arrangements for storing its equipment and materials. The Contractor shall make its own arrangements for any necessary off-site storage or shop areas necessary for the proper execution of the Work. Approved areas within Work site may be used for temporary storage; however, the Contractor shall be responsible for obtaining any necessary permits from SVCE. In any case, the Contractor's equipment and personal vehicles of the Contractor's employees shall not be parked on the traveled way or on any section where traffic is restricted at any time.

The Contractor shall deliver, handle, and store materials in accordance with the manufacturer's written recommendations and by methods and means that will prevent damage, deterioration, and loss including theft. Delivery schedules shall be controlled to minimize long-term storage of products at the Project site and overcrowding of construction spaces. In particular, the Contractor shall provide delivery and installation coordination to ensure minimum holding or storage times for materials recognized to be flammable, hazardous, easily damaged, or sensitive to deterioration, theft, and other sources of loss.

Storage shall be arranged to provide access for inspection. The Contractor shall periodically inspect to assure materials are undamaged and are maintained under required conditions.

All costs associated with the clean-up and storage required to complete the Project shall be the sole responsibility of the Contractor.

3-12.4.2 Storage in Public Streets

The first sentence of Section 3-12.4.2 shall not be incorporated and shall instead be replaced with the following:

Construction materials and equipment shall not be stored in Streets, roads, or highways unless otherwise specified in the Special Provisions or approved by SVCE Engineer.

3-13 COMPLETION, ACCEPTANCE, AND WARRANTY

3-13.1 Completion.

The Contractor shall complete all Work under the Contract within 119 Calendar Days from the Notice to Proceed.

3-13.2 Acceptance

The Project will not be considered complete and ready for SVCE Board direction to staff regarding recordation of the Notice of Completion until all required Work is completed, the Work site is cleaned up in accordance with Section 3-12 of Part 1 of the Standard Specifications and the Special Provisions, and all of the following items have been received by SVCE Engineer:

1. A form of Notice of Completion, with all information required by the California Civil Code;
2. All written guarantees and warranties;
3. Evidence that the Performance Bond has been extended and will remain in effect for the period specified in Section 1-7.2 of the Standard Specifications, as modified by these General Provisions;
4. All "as-builts";
5. Duplicate copies of all operating instructions and manufacturer's operating catalogs and data, together with such field instructions as necessary to fully instruct SVCE personnel in correct operation and maintenance procedures for all equipment installed listed under the electrical, air conditioning, heating, ventilating and other trades. This data and instructions shall be furnished for all equipment requiring periodic adjustments, maintenance or other operation procedures.

The Contractor shall allow at least seven (7) Working Days' notice for final inspection. Such notice shall be submitted to SVCE Engineer in writing.

3-13.3 Warranty

The following is added to Section 3-13.3:

For the purposes of the calculation of the start of the warranty period, the Work shall be deemed to be completed upon the date of recordation of the Notice of Completion. If that direction is contingent on the completion of any items remaining on a punchlist, the Work shall be deemed to be completed upon the date of SVCE Engineer's acceptance of the final item(s) on that punchlist.

The Contractor shall repair or replace defective materials and workmanship as required in this Section 3-13.3 at its own expense. Additionally, the Contractor agrees to defend, indemnify and hold SVCE harmless from claims of any kind arising from damage, injury or death due to such defects.

The parties agree that no certificate given shall be conclusive evidence of the faithful performance of the Contract, either in whole or in part, and that no payment shall be construed to be in acceptance of any defective Work or improper materials. Further, the certificate or final payment shall not terminate the Contractor's obligations under the warranty herein. The Contractor agrees that payment of the amount due under the Contract and the adjustments and payments due for any Work done in accordance with any alterations of the same, shall release SVCE, SVCE

Council and its officers and employees from any and all claims or liability on account of Work performed under the Contract or any alteration thereof.

SECTION 4. CONTROL OF MATERIALS

4-1 GENERAL

The Contractor and all Subcontractors, suppliers, and vendors shall guarantee that the Work will meet all requirements of this Contract as to the quality of materials, equipment, and workmanship.

4-4 TESTING

Except as elsewhere specified, SVCE shall bear the cost of testing materials and workmanship that meet or exceed the requirements indicated in the Standard Specifications and the Special Provisions. The cost of all other tests, including the retesting of material or workmanship that fails to pass the first test, shall be borne by the Contractor.

4-6 TRADE NAMES

If the Contractor requests to substitute an equivalent item for a brand or trade name item, the burden of proof as to the comparative quality and suitability of alternative equipment or articles or materials shall be upon the Contractor, and the Contractor shall furnish, at its own expense, all information necessary or related thereto as required by SVCE Engineer. All requests for substitution shall be submitted, together with all documentation necessary for SVCE Engineer to determine equivalence, no later than 14 calendar Days after the award of Contract, unless a different deadline is listed in the Special Provisions.

SECTION 5. LEGAL RELATIONS AND RESPONSIBILITIES

5-3 LABOR

5-3.1 Public Work

The Contractor acknowledges that the Project is a “public work” as defined in Labor Code Section 1720 *et seq.* (“Chapter 1”), and that this Project is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations (“DIR”) implementing such statutes. The Contractor shall perform all Work on the Project as a public work. The Contractor shall comply with and be bound by all the terms, rules and regulations described in (a) and (b) as though set forth in full herein.

5-3.2 Copies of Wage Rates

Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Project are on file at SVCE and will be made available to any interested party on request. By initiating any Work, the Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and the Contractor shall post such rates at each job site covered by these Contract Documents.

The Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for

failure to pay prevailing wages. The Contractor shall, as a penalty paid to SVCE, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to these Contract Documents by the Contractor or by any Subcontractor.

5-3.3 Payroll Records

The Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires the Contractor and each Subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform SVCE of the location of the records. The Contractor has ten (10) days in which to comply subsequent to receipt of a written notice requesting these records, or as a penalty to SVCE, the Contractor shall forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

The Contractor and each Subcontractor shall comply with and be bound by the provisions of Labor Code Section 1771.4(a)(3), which requires that each Contractor and each Subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner at least monthly, in a format prescribed by the Labor Commissioner.

5-3.4 Hours of Labor

The Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. The Contractor shall comply with and be bound by Labor Code Section 1810. The Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty paid to SVCE, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Project by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of the Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

5-3.5 Apprentices

The Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. The Contractor shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing Work on this Project, the Contractor shall provide SVCE with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) Days after concluding Work, Contractor and each of its Subcontractors shall submit to SVCE a verified statement of the journeyman and apprentice hours performed under this Contract.

5-3.6 Debarment or Suspension

The Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or any other federal or State law providing for the debarment of contractors from public works. The Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or any other federal or State law providing for the debarment of contractors from public works. If the Contractor or any Subcontractor becomes debarred or suspended during the duration of the Project, the Contractor shall immediately notify SVCE.

5-3.7 Registration with the DIR

In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5.

5-3.8 Compliance Monitoring and Posting Job Sites

This Project is subject to compliance monitoring and enforcement by the DIR. The Contractor shall post job site notices, as prescribed by regulation.

5-3.9 Subcontractors

For every Subcontractor who will perform Work on the Project, the Contractor shall be responsible for such Subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and the Contractor shall include in the written Contract between it and each Subcontractor a copy of the provisions in this Section 5-3 of the General Provisions and a requirement that each Subcontractor shall comply with those provisions. The Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure Subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the Subcontractor and upon becoming aware of the failure of the Subcontractor to pay its workers the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify any failure.

5-3.10 Prevailing Wage Indemnity

To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless and defend (at the Contractor's expense with counsel reasonably acceptable to SVCE) SVCE, its

officials, officers, employees, agents and independent contractors serving in the role of SVCE officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed in Section 5-3 of the General Provisions by any Person (including the Contractor, its Subcontractors, and each of their officials, officers, employees and agents) in connection with any Work undertaken or in connection with the Contract Documents, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of the Contractor under this Section 5-3.10 shall survive expiration or termination of the Contract.

5-4 INSURANCE

5-4.1 General

The first paragraph of Section 5-4.1 of Part 1 of the Standard Specifications shall not be incorporated and shall instead be replaced with the following:

The Contractor shall provide and maintain insurance naming SVCE, its elected and appointed officials, officers, employees, attorneys, agents, volunteers, and independent contractors in the role of SVCE officials as insureds or additional insureds regardless of any inconsistent statement in the policy or any subsequent endorsement whether liability is attributable to the Contractor or SVCE. The insurance provisions shall not be construed to limit the Contractor's indemnity obligations contained in the Contract. SVCE will not be liable for any accident, loss or damage to the Work prior to completion, except as otherwise specified in Section 6-5.

5-4.2 General Liability Insurance

The Contractor shall at all times during the term of the Contract carry, maintain, and keep in full force and effect the insurance referenced in Section 5-4 of Part 1 of the Standard Specifications, as modified below.

5-4.2.1 Additional Insureds

SVCE, its elected and appointed officials, officers, employees, attorneys, agents, volunteers, and independent contractors in the role of SVCE officials, shall be the insured or named as additional insureds covering the Work, regardless of any inconsistent statement in the policy or any subsequent endorsement, whether liability is attributable to the Contractor or SVCE.

5-4.2.2 No Limitation on Indemnity

The insurance provisions shall not be construed to limit the Contractor's indemnity obligations contained in these Contract Documents.

5-4.2.3 Replacement Insurance

The Contractor agrees that it will not cancel, reduce or otherwise modify the insurance coverage required by this Section 5-4 during the term of the Contract. The Contractor agrees that if it does not keep the required insurance in full force and effect, and such insurance is available at a reasonable cost, SVCE may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of the Contractor and the cost of such insurance may be deducted, at the option of SVCE, from payments due the Contractor. This shall be in addition to all other legal options available to SVCE to enforce the insurance requirements.

5-4.2.4 Certificates of Insurance with Original Endorsements

The Contractor shall submit to SVCE certificates of insurance with the original endorsements, both of which reference the same policy number, for each of the insurance policies that meet the insurance requirements, not less than one (1) day before beginning of performance under the Contract. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must be executed on forms approved by SVCE. The endorsements must specifically name SVCE and its elected and appointed officials, officers, employees, attorneys, agents, volunteers, and independent contractors in the role of SVCE officials as insureds or additional insureds. Current insurance certificates and endorsements shall be kept on file with SVCE at all times during the term of this Contract. SVCE reserves the right to require complete, certified copies of all required insurance policies at any time.

5-4.2.5 Subcontractors

The Contractor shall require each of its Subcontractors that perform services under the Contract to maintain insurance coverage that meets all of the requirements of this Section 5-4.

5-4.5 Insurance Requirements not Limiting

If the Contractor maintains broader coverage and/or higher limits than the minimums required in this Section 5-4, SVCE requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SVCE. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of the Contractor under this Contract.

5-4.6 Deductibles

Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of SVCE the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to SVCE indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

5.7 SAFETY

5-7.8 Steel Plate Covers

5-7.8.1 General

The Contractor shall cover all openings, trenches and excavations at the end of each Work Day with steel plate covers.

Section 5-8 is hereby added to Section 5 of Part 1 of the Standard Specifications, as follows:

5-8 INDEMNIFICATION

The following indemnity provisions shall supersede the indemnity in Section 5-4.1 of the Standard Specifications.

5-8.1 Contractor's Duty.

To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify SVCE and its elected officials, officers, attorneys, agents, employees, volunteers, successors, assigns and those SVCE agents serving as independent contractors in the role of SVCE officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, stop payment notices, 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 the Contractor, its officers, agents, servants, employees, Subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual for whom the Contractor bears legal liability) in the performance of the Contract, 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. The Contractor 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. The Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith. SVCE shall not be liable for any accident, loss, or damage to the Work prior to completion, except as otherwise specified in Section 6-5.

5-8.1.1 Taxes and Workers' Compensation.

The Contractor shall pay all required taxes on amounts paid to the Contractor under the Contract, and indemnify and hold SVCE harmless from any and all taxes, assessments, penalties, and interest asserted against SVCE by reason of the independent contractor relationship created by the Contract. The Contractor shall fully comply with the Workers' Compensation law regarding the Contractor and the Contractor's employees. The Contractor shall indemnify and hold SVCE harmless from any failure of the Contractor to comply with applicable Workers' Compensation laws. SVCE may offset against the amount of any fees due to the Contractor under the Contract any amount due to SVCE from the Contractor as a result of the Contractor's failure to promptly pay to SVCE any reimbursement or indemnification arising under this Subsection 5-8.1.1.

5-8.1.2 Subcontractor Indemnity Agreements.

The Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 5-8 from each and every Subcontractor or any other person or entity involved by, for, with or on behalf of the Contractor in the performance of the Contract. If the Contractor fails to obtain such indemnity obligations, the Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in 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 the Contractor's Subcontractor, its officers, agents, servants, employees, Subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual for whom the Contractor's Subcontractor bears legal liability) in the performance of the Contract, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final court decision or by the agreement of the Parties.

5-8.2 Workers' Compensation Acts not Limiting.

The Contractor's indemnifications and obligations under this Section 5-8, or any other provision of the Contract, shall not be limited by the provisions of any Workers' Compensation act or similar act. The Contractor expressly waives its statutory immunity under such statutes or laws as to SVCE, its officers, agents, employees and volunteers.

5-8.3 Insurance Requirements not Limiting.

SVCE does not, and shall not, waive any rights that it may possess against the Contractor because of the acceptance by SVCE, or the deposit with SVCE, of any insurance policy or certificate required pursuant to the Contract. The indemnities in this Section 5-8 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against SVCE.

5-8.4 Civil Code Exception.

Nothing in this Section 5-8 shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Contract is subject to Civil Code Section 2782(a) or SVCE's active negligence to the limited extent that the underlying Contract Documents are subject to Civil Code Section 2782(b), provided such sole negligence, willful misconduct or active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

5-8.5 Nonwaiver of Rights.

Indemnitees do not and shall not waive any rights that they may possess against the Contractor because the acceptance by SVCE, or the deposit with SVCE, of any insurance policy or certificate required pursuant to these Contract Documents. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.

5-8.6 Waiver of Right of Subrogation.

The Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all Claims arising out of or incident to the activities or operations performed by or on behalf of the Contractor regardless of any prior, concurrent or subsequent active or passive

negligence by Indemnitees.

5-8.7 Survival of Terms.

The Contractor's indemnifications and obligations under this Section 5-8 shall survive the expiration or termination of the Contract, are intended to be as broad and inclusive as is permitted by the law of the State, and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against the Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

SECTION 6. PROSECUTION AND PROGRESS OF THE WORK

6-1 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF THE WORK

6-1.1 Construction Schedule

One (1) week before the scheduled pre-construction meeting, the Contractor must submit to SVCE for review and approval the construction schedule required by the first paragraph of Section 6-1.1. The Contractor shall make revisions as required by SVCE. The schedule must account for all subcontract work, as well as the work of the Contractor, submittals, coordination with the other contractors performing concurrent work and the Traffic Control Plan. The Contractor shall update this Construction Schedule when directed by SVCE, or when:

- a. A Change Order significantly affects the Contract completion date or the sequence of construction approach or activities; or
- b. The actual sequence of the Work, or the planned sequence of the Work, is changed and does not conform to the Contractor's current accepted Project construction schedule.

The Contractor shall submit an updated construction schedule with its monthly invoice every month. Progress payments shall be contingent upon the receipt of monthly updated construction schedules.

6-1.1.1 Pre-Construction Conference

Approximately 14 Days before the commencement of Work at the site, a pre-construction conference will be held at SVCE and shall be attended by the Contractor's Project manager, its on-site field superintendent, and any Subcontractors that the Contractor deems appropriate. Attendance by the Contractor and any Subcontractors designated is mandatory.

Contractor shall submit its twenty-four (24) hour emergency telephone numbers to SVCE Engineer for approval a minimum of two (2) Working Days before the pre-construction conference. Unless previously submitted to SVCE Engineer, the Contractor shall bring to the pre-construction conference copies of each of the following:

- 1) Construction Schedule.
- 2) Procurement schedule of major equipment and materials and items requiring long lead time.
- 3) Shop drawing/sample submittal schedule.

- 4) Preliminary schedule of values (lump sum price breakdown) for progress payment purposes.
- 5) Written designation of the on-site field superintendent and the Project manager. Both daytime and emergency telephone numbers shall be included in the written designation.

The purpose of the conference is to designate responsible personnel and establish a working relationship. The parties will discuss matters requiring coordination and establish procedures for handling such matters. The complete agenda will be furnished to the Contractor before the meeting date. The Contractor shall be prepared to discuss all of the items listed below.

- 1) The Contractor's construction schedule.
- 2) Notification of local residents before starting any Work and keeping them informed throughout the Project.
- 3) Procedures for transmittal, review, and distribution of the Contractor's submittals.
- 4) Processing applications for payment.
- 5) Maintaining record documents.
- 6) Critical Work sequencing.
- 7) Maintaining sewage service during construction, including proposed by-passes.
- 8) NPDES requirements, if any.
- 9) Field decisions and Change Orders.
- 10) Use of Project site, office and storage areas, security, housekeeping, and SVCE's needs.
- 11) Major equipment deliveries and priorities.
- 12) Traffic control.
- 13) Any other item that SVCE representative states is relevant to the meeting.

6-1.1.2 Weekly Progress Meetings

Progress meetings will be held each week during the course of the Project. The meeting location, day of the week and time of day will be mutually agreed to by SVCE and the Contractor. The Contractor shall provide a two (2) week "look ahead" schedule for each meeting. The construction manager will preside at these meetings and will prepare the meeting agenda, meeting minutes and will distribute minutes to all persons in attendance. As the Work progresses, if it is determined by agreement of the attendees, that weekly meetings are not necessary, the weekly progress meetings may be changed to bi-weekly progress meetings.

6-1.2 Commencement of the Work

The Contractor shall not begin any construction activity at the site before the issuance of the Notice to Proceed. Any Work that is done by the Contractor in advance of the Notice to Proceed shall be considered as being done at the Contractor's own risk and responsibility, and as a consequence will be subject to rejection.

Section 6-1.3 is hereby added to Section 6 of Part 1 of the Standard Specifications, as follows:

6-1.3 Working Days And Hours

The Contractor shall do all Work between the hours of _____ a.m. to _____ p.m., _____ through _____. No Work will be allowed on _____, _____ or city holidays, which are as follows: _____.

A permit may have other hours or Days for the Contractor to do the Work, and those hours and Days shall supersede any hours and Days written in this Section.

Whenever the Contractor is permitted or directed to perform night Work or to vary the period during which Work is performed during the Working Day, the Contractor shall give twelve (12) hours' notice to SVCE Engineer so that inspection may be provided. A charge may be made to the Contractor for approved overtime or weekend inspections requested by the Contractor.

6-4 DELAYS AND EXTENSIONS OF TIME

6-4.1 General.

Unless otherwise agreed in writing, an adjustment to the Contract time by reason of a Change Order shall be agreed to at the time the Change Order is issued and accepted by Contractor. If the Change Order does not reserve the right of the parties, or either of them, to seek an adjustment to the Contract time, then the parties forever relinquish and waive such right and there shall be no further adjustments to the Contract time.

No extension of time will be granted for any event, including pandemics, leading to the issuance of a "stay at home" or similar kind of order by any local, State, or federal governmental authority, if the Work has been deemed, either by emergency order or proclamation, or operation of law, to be an essential service that is exempt from such stay at home or similar order.

6-4.2 Extensions of Time

In the event it is deemed appropriate by SVCE to extend the time for completion of the Work, any such extension shall not release any guarantee for the Work required by the Contract Documents, nor shall any such extension of time relieve or release the Sureties on the Bonds executed. In executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such extensions of time. The amount of time allowed by an extension of time shall be limited to the period of the delay giving rise to the same as determined by SVCE. Notwithstanding any dispute which may arise in connection with a claim for adjustment of the Contract time, the Contractor shall promptly proceed with the Work.

6-4.3 Payment for Delays

Notwithstanding any other terms and conditions of the Contract Documents, SVCE shall have no obligation whatsoever to increase the Contract Price or extend the time for delays.

Unless compensation and/or markup is agreed upon by SVCE, the Contractor agrees that no payment of compensation of any kind shall be made to the Contractor for damages or increased overhead costs caused by any delays in the progress of the Contract, whether such delays are avoidable or unavoidable or caused by any act or omission of SVCE or its agents. Any accepted delay claim shall be fully compensated for by an extension of time to complete the performance of the Work.

This Section shall not apply to compensable delays caused solely by SVCE. If a compensable delay is caused solely by SVCE, the Contractor shall be entitled to a Change Order that: (1) extends the time for completion of the Contract by the amount of delay caused by SVCE; and (2) provides equitable adjustment, as determined by SVCE, to the Contractor.

6-8 TERMINATION OF THE CONTRACT FOR CONVENIENCE

Notwithstanding any provision of Section 6-8, SVCE may terminate this Agreement for any or no reason by providing not less than fifteen (15) Days' prior notice.

The following sentence is added to Section 6-8:

In no event (including termination for impossibility or impracticability, due to conditions or events beyond the control of SVCE, for any other reason or for no reason) shall the total amount of money to Contractor exceed the amount which would have been paid to Contractor for the full performance of the services described in the Contract.

6-9 LIQUIDATED DAMAGES

The \$250/day liquidated damage amount is hereby replaced with the amount of \$1,000/day.

For the purposes of the calculation of the start of the liquidated damages, the Work shall be deemed to be completed when the same has been completed in accordance with the Plans and Specifications therefor and to the satisfaction of SVCE , and SVCE has certified such completion in accordance with Section 3-13.1 of Part 1 of the Standard Specifications.

SECTION 7. MEASUREMENT AND PAYMENT

7.3 PAYMENT

7.3.1 General

The unit and lump sum prices to be paid shall constitute full compensation for all labor, equipment, materials, tools and incidentals required to complete the Project as outlined in these Contract Documents and as directed by SVCE Engineer. In accordance with Public Contract Code Section 7107, if no claims have been filed and are still pending, the amount deducted from the final estimate and retained by SVCE will be paid to the Contractor except such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be withheld for any other lawful purposes.

7-3.2 Partial and Final Payment

7-3.2.1 Monthly Closure Date and Invoice Date

For purposes of Section 7-3.2, the monthly closure date shall be the last Day of each month. A measurement of Work performed and a progress estimate of the value thereof based on the Contract and of the monthly payment shall be prepared by the Contractor and submitted to SVCE Engineer before the tenth (10th) Day of the following month for verification and payment consideration.

7-3.2.2 Payments

SVCE shall make payments within thirty (30) Days after receipt of the Contractor's undisputed and properly submitted payment request, including an updated construction schedule pursuant to Section 6-1.1 of the General Provisions. SVCE shall return to the Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven

(7) Days after receipt, and shall explain in writing the reasons why the payment request is not proper.

7-3.2.3 Retention

SVCE shall withhold not less than five percent (5%) from each progress payment. However, at any time after fifty percent (50%) of the Work has been completed, if SVCE Council finds that satisfactory progress is being made, it may, at its discretion, make any of the remaining progress payments in full for actual Work completed. SVCE shall withhold not less than five percent (5%) of the Contract Price from the Final Payment Amount (defined in Section 7-3.2.4) until at least thirty-five (35) days after recordation of the Notice of Completion, or recordation of a notice of acceptance or cessation, but not later than the period permitted by Public Contract Code Section 7107.

7-3.2.4 Final Invoice and Payment

Whenever the Contractor shall have completely performed the Contract in the opinion of SVCE, SVCE Engineer shall notify SVCE that the Contract has been completed in its entirety. The Contractor shall then submit to SVCE Engineer a written statement of the final quantities of Contract items for inclusion in the final invoice. Upon receipt of such statement, SVCE Engineer shall check the quantities included therein and shall authorize a payment amount, which in SVCE Engineer's opinion shall be just and fair, covering the value of the total amount of Work done by the Contractor, less all previous payments and all amounts to be retained under the provisions of the Contract Documents ("Final Payment Amount"). SVCE Engineer shall then request that SVCE accept the Work and that SVCE be authorized to file, on behalf of SVCE in the office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. In addition, the final payment will not be released until the Contractor returns the control set of Plans and Specifications showing the redlined as-built conditions.

7-3.2.5 Substitute Security

In accordance with Public Contract Code Section 22300, the Contractor may request that it be permitted to substitute securities in lieu of having retention withheld by SVCE from progress payments when such payments become due or, in the alternative, the Contractor may request that SVCE make payments of earned retentions directly to an agreed upon designated escrow agent at the Contractor's expense. If the Contractor selects either one of these alternatives, the following shall control.

7.3.2.5.1 Substitution of Securities for Performance Retention

At some reasonable time before any progress payment would otherwise be due and payable to the Contractor in the performance of Work under these Contract Documents, the Contractor may submit a request to SVCE in writing to permit the substitution of retentions with securities equivalent to the amount estimated by SVCE ("estimated amount of retention") to be withheld. The Contractor shall deposit such securities with SVCE or may, in the alternative, deposit such securities in escrow with a State or federally chartered bank in California, as the escrow agent, at the Contractor's expense. Such securities will be the equivalent or greater in value of the estimated amount of retention. If the Contract is modified by written Modifications or Change Orders or the Contractor otherwise becomes entitled to receive an amount more than the Contract Price at the time the securities are deposited, the Contractor shall, at the request of SVCE, deposit with SVCE or escrow agent, whichever is applicable, additional securities within a reasonable

time so that the amount of securities on deposit with SVCE or escrow agent is equivalent or greater in value than the amount of retention SVCE would otherwise be entitled to withhold from progress payments due or to become due to the Contractor as the Work progresses. SVCE shall withhold any retention amount that exceeds the security amount until the additional securities are deposited and, if the deposit is with an escrow agent, SVCE has confirmation from that escrow agent of the new total value of securities. Upon satisfactory completion of the Contract, which shall mean, among other things, that SVCE is not otherwise entitled to retain proceeds from progress payments as elsewhere provided in the Contract or under applicable law, the securities shall be returned to the Contractor. SVCE shall, within its sole discretion, determine whether the amount of the securities on deposit with SVCE or escrow agent is equal to or greater than the amount of estimated retention of progress payments that could otherwise be held by SVCE if the Contractor had not elected to substitute same with securities.

7-3.2.5.2 Deposit of Retention Proceeds with an Escrow Agent

As an alternative to the substitution of securities, as provided above, or SVCE otherwise retaining and holding retention proceeds from progress payments, the Contractor may request SVCE to make payments of retentions earned directly to an escrow agent with the same qualifications as required in Section 7-3.2.5.1 above and at the expense of the Contractor. At its sole expense, the Contractor may direct the investment of such retention payments into only such securities as mentioned in Section 7-3.2.5.4 below and shall be entitled to interest earned on such investments on the same terms provided for securities deposited by the Contractor. Upon satisfactory completion of the Contract, which shall mean when SVCE would not otherwise be entitled to withhold retention proceeds from progress payments had the Contractor not elected to have such proceeds deposited into escrow, the Contractor shall be allowed to receive from the escrow agent all securities, interest and payments deposited into escrow pursuant to the terms of this Section. The Contractor shall pay to each Subcontractor, not later than ten (10) Days of receipt of payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount withheld to ensure performance of the Contractor.

7-3.2.5.3 Subcontractor Entitlement to Interest

If the Contractor elects to receive interest on any moneys withheld in retention by SVCE, then the Subcontractor shall receive the identical rate of interest received by the Contractor on any retention moneys withheld from the Subcontractor by the Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the Subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the Subcontractor. If the Contractor elects to substitute securities in lieu of retention, then, by mutual consent of the Contractor and the Subcontractor, the Subcontractor may substitute securities in exchange for the release of moneys held in retention by the Contractor. The Contractor shall pay each Subcontractor, not later than ten (10) Days after receipt of escrow moneys, the amount owed to each Subcontractor from the moneys plus the respective amount of interest earned, net of costs attributed to the retention held from each Subcontractor, on the amount of retention withheld to ensure performance of the Subcontractor.

7-3.2.5.4 Securities Eligible for Investment

Securities eligible for investment shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed upon between the Contractor and

SVCE. The Contractor shall be the beneficial owner of any securities substituted for any monies withheld and shall receive any interest thereon.

7-3.2.5.5 Escrow Agreement for Security Deposits in Lieu of Retention

The escrow agreement that shall be used for the deposit of securities in lieu of retention shall substantially conform to the form prescribed in Public Contract Code Section 22300(f).

7-3.2.5.6 Inconsistencies with Prevailing Statutory Requirements

If there is any inconsistency between or differences in Public Contract Code Section 22300 and the terms of this provision, or any future amendments thereto, Section 22300 shall control.

Section 7-3.9 is hereby added to Section 7-3 of Part 1 of the Standard Specifications, as follows:

7-3.9 AUDIT

SVCE or its representative shall have the option of inspecting and/or auditing all records and other written materials used by the Contractor in preparing its billings to SVCE as a condition precedent to any payment to the Contractor or in response to a construction claim or a Public Records Act (Government Code Section 7920.000, *et seq.*) request. The Contractor will promptly furnish documents requested by SVCE at no cost. Additionally, the Contractor shall be subject to State Auditor examination and audit at the request of SVCE or as part of any audit of SVCE, for a period of three (3) years after final payment under the Contract. The Contractor shall include a copy of this Section 7-3.9 in all contracts with its Subcontractors, and the Contractor shall be responsible for immediately obtaining those records or other written material from its Subcontractors upon a request by the State Auditor or SVCE. If the Project includes other auditing requirements, those additional requirements will be listed in the Special Provisions.

SECTION 8 FACILITIES FOR AGENCY PERSONNEL

8-1 General

No field offices for SVCE personnel shall be required; however, SVCE personnel shall have the right to enter upon the Project at all times and shall be admitted to the offices of the Contractor to use the telephone, desk and sanitary facilities provided by the Contractor for its own personnel.

Section 9 is hereby added to Part 1 of the Standard Specifications, as follows:

SECTION 9. ADDITIONAL TERMS

9-1 NONDISCRIMINATORY EMPLOYMENT

The Contractor shall not unlawfully discriminate against any individual based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or military and veteran status. The Contractor understands and agrees that it is bound by and will comply with the nondiscrimination mandates of all statutes and local ordinances and regulations.

9-3 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until the final acceptance of the Work by SVCE Council in accordance with Section 3-13.2 of the General Provisions, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part of the Work by the action of the elements, criminal acts, or any other cause. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except for such injuries or damages arising from the sole negligence or willful misconduct of SVCE, its officers, agents or employees. In the case of suspension of Work from any cause whatever, the Contractor shall be responsible for all materials and the protection of Work already completed, shall properly store and protect them if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

9-4 PROCEDURE IN CASE OF DAMAGE TO PUBLIC PROPERTY

Any portions of curb, gutter, sidewalk or any other SVCE improvement damaged by the Contractor during the course of construction shall be replaced by the Contractor at its own cost. The cost of additional replacement of curb, gutter or sidewalk in excess of the estimated quantities shown in the Bid form and Specifications, and found necessary during the process of construction (but not due to damage resulting from carelessness on the part of the Contractor during its operation), shall be paid to the Contractor at the unit prices submitted in his or her Bid.

9-5 REMOVAL OF INTERFERING OBSTRUCTIONS

The Contractor shall remove and dispose of all debris, abandoned structures, tree roots and obstructions of any character encountered during the process of excavation. It is understood that the cost of any such removals are made a part of the unit price bid by the Contractor under the item for excavation or removal of existing Work.

9-6 SOILS ENGINEERING AND TESTING

A certified materials testing firm may be retained by SVCE to perform materials tests during the Contractor's entire operation to ascertain compliance with the Contract requirements. SVCE shall be responsible for the first series of tests. If the initial tests do not meet the Contract requirements, the Contractor shall bear the cost of all subsequent tests.

If SVCE requires other tests or more specific requirements for testing regarding this Project, those details will be included in the Special Provisions.

9-7 ACCESS TO PRIVATE PROPERTY

Unless otherwise stated in the Special Provisions, the Contractor shall be responsible for all fees and costs associated with securing permission to access private property for any portion of the Project.

9-9 CLAIM DISPUTE RESOLUTION

In the event of any dispute or controversy with SVCE over any matter whatsoever, the Contractor shall not cause any delay or cessation in or of Work, but shall proceed with the performance of the Work in dispute. The Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The disputed Work will be categorized

as an “unresolved dispute” and payment, if any, shall be as later determined by mutual agreement or a court of law. The Contractor shall keep accurate, detailed records of all disputed Work, claims and other disputed matters.

All claims arising out of or related to the Contract Documents or this Project, and the consideration and payment of such claims, are subject to Public Contract Code Section 9204 and Public Contract Code Section 20104 et seq. (Article 1.5), where applicable. This Contract hereby incorporates those provisions as though fully set forth herein. For purposes of this Section, “claim” means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for (i) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by SVCE, (ii) payment by SVCE of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled, or (iii) payment of an amount that is disputed by SVCE. The Contractor or any Subcontractor must file a claim in accordance with Section 9204 and Article 1.5 (if applicable), and must then adhere to Section 9204 and Article 1.5 (as applicable)

In addition to compliance with Public Contract Code Section 9204 and Article 1.5, filing a claim in accordance with the Government Claims Act (Government Code Section 810 et seq.) is a prerequisite to filing any lawsuit against SVCE relating to this Contract.

9-10 THIRD PARTY CLAIMS

SVCE shall have full authority to compromise or otherwise settle any claim relating to the Project at any time. SVCE shall timely notify the Contractor of the receipt of any third-party claim relating to the Project. SVCE shall be entitled to recover its reasonable costs incurred in providing this notice.

9-11 COMPLIANCE WITH LAWS

The Contractor shall comply with all applicable federal, State and local laws, ordinances, codes and regulations in force at the time the Contractor performs pursuant to the Contract Documents.

9-12 REQUIREMENT TO MITIGATE THE SPREAD OF COVID-19. The Contractor and all subcontractors for the Work shall comply with all applicable Federal, State, County, and City statutes, regulations, orders, and ordinances regarding COVID-19 Infection Prevention. This requirement specifically includes, without limitation, compliance with the “Safety and Health Guidance COVID-19 Infection Prevention in Construction” issued by the California Department of Industrial Relations, Division of Occupational Safety and Health and Safety on October 27, 2020 and as may be amended from time to time by the Department.

Prior to the pre-construction meeting, the Contractor shall submit to SVCE a “COVID-19 Mitigation Program” implementing these requirements and shall post the COVID-19 Mitigation Program on the project site in a manner designated by SVCE’s Project Manager. The failure of employees or workers of the Contractor and all subcontractors on the Work to comply with these requirements shall be a default per Section 6-7.1, and may also result in a suspension of the Work pursuant to Section 6-6. Contractor acknowledges that, in the event that the Engineer suspends the Work as a result of such failure by Contractor or one of its subcontractors to comply with these requirements, SVCE is not responsible for the delay, and that pursuant to Section 6-6.1 the Contractor is not entitled to compensation. The Contractor shall also pay to SVCE the costs and expenses incurred by SVCE resulting from the failure of employees of the Contractor and all

subcontractors on the Work to comply with these requirements including, but not limited to, the salaries and benefits for SVCE employees who are unable to work due to exposure to COVID-19 as a result of such failure, and workers compensation benefits and expenses. Delays in the Work resulting from Contractor's or its subcontractor's failure to comply with these regulations shall not be considered an unforeseen event entitling Contractor to an extension of time or payment for delay pursuant to Section 6-4 of the Standard Specifications.

9-13 CONTRACTOR'S REPRESENTATIONS

By signing the Contract, the Contractor represents, covenants, agrees, and declares under penalty of perjury under the laws of the State of California that: (a) the Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in the Contract Documents; (b) there are no obligations, commitments, or impediments of any kind that will limit or prevent its full performance under the Contract Documents; (c) there is no litigation pending against the Contractor that could adversely affect its performance of the Contract, and the Contractor is not the subject of any criminal investigation or proceeding; and (d) to the Contractor's actual knowledge, neither the Contractor nor its personnel have been convicted of a felony.

9-14 CONFLICTS OF INTEREST

The Contractor agrees not to accept any employment or representation during the term of the Contract or within twelve (12) months after acceptance as defined in Section 3-13.2 of the General Provisions that is or may likely make the Contractor "financially interested," as provided in Government Code Sections 1090 and 87100, in any decisions made by SVCE on any matter in connection with which the Contractor has been retained pursuant to the Contract Documents.

9-15 APPLICABLE LAW

The validity, interpretation, and performance of these Contract Documents shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to the Contract shall be in the Superior Court with geographic jurisdiction over SVCE.

9-16 TIME

Time is of the essence in these Contract Documents.

9-17 INDEPENDENT CONTRACTOR

The Contractor and Subcontractors shall at all times remain, as to SVCE, wholly independent contractors. Neither SVCE nor any of its officials, officers, employees or agents shall have control over the conduct of the Contractor, Subcontractors, or any of their officers, employees, or agents, except as herein set forth, and the Contractor and Subcontractors are free to dispose of all portions of their time and activities that they are not obligated to devote to SVCE in such a manner and to such Persons that the Contractor or Subcontractors wish except as expressly provided in these Contract Documents. The Contractor and Subcontractors shall have no power to incur any debt, obligation, or liability on behalf of SVCE, bind SVCE in any manner, or otherwise act on behalf of SVCE as agents. The Contractor and Subcontractors shall not, at any time or in any manner, represent that they or any of their agents, servants or employees, are in any manner agents, servants or employees of SVCE. The Contractor and Subcontractors agree to pay all

required taxes on amounts paid to them under the Contract, and to indemnify and hold SVCE harmless from any and all taxes, assessments, penalties, and interest asserted against SVCE by reason of the independent contractor relationship created by the Contract Documents. The Contractor shall include this provision in all contracts with all Subcontractors.

9-18 CONSTRUCTION

In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of these Contract Documents shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Contract Documents or who drafted that portion of the Contract Documents.

9-19 NON-WAIVER OF TERMS, RIGHTS AND REMEDIES

Waiver by either party of any one (1) or more of the conditions of performance under these Contract Documents shall not be a waiver of any other condition of performance under these Contract Documents. In no event shall the making by SVCE of any payment to the Contractor constitute or be construed as a waiver by SVCE of any breach of covenant, or any default that may then exist on the part of the Contractor, and the making of any such payment by SVCE shall in no way impair or prejudice any right or remedy available to SVCE with regard to such breach or default.

9-20 TERM

The Contract is effective as of the Effective Date listed, and shall remain in full force and effect until the Contractor has fully rendered the services required by the Contract Documents or the Contract has been otherwise terminated by SVCE. However, some provisions may survive the term listed within this Section, as stated in those provisions.

9-21 NOTICE

Except as otherwise required by law, any notice or other communication authorized or required by these Contract Documents shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during SVCE's regular business hours or (b) on the third (3rd) business day following deposit in the United States mail, postage prepaid, to the addresses listed on the Contractor's Bid and SVCE's office, or at such other address as one party may notify the other.

9-22 SEVERABILITY

If any term or portion of these Contract Documents is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of these Contract Documents shall continue in full force and effect.

SPECIAL PROVISIONS

The Sections that follow supplement, but do not replace, the corresponding provisions in Part 3 (Construction Methods) and Part 4 (Existing Improvements) of the Standard Specifications, except as otherwise indicated herein. In the event of any conflict between the Standard Specifications and these Special Provisions, these Special Provisions shall control.

SECTION 306 - OPEN TRENCH CONDUIT CONSTRUCTION

306-3.1 GENERAL

Pursuant to Public Contract Code Section 7104, if the project involves trenching more than four (4) feet deep, Contractor shall promptly and before the following conditions are disturbed notify SVCE in writing of any:

a. Material that Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; and/or

b. Subsurface or latent physical conditions at the site differing from those indicated; and/or

c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

SVCE shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between SVCE and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

As required by Labor Code Section 6705 and in addition thereto, whenever work under the Contract that involves an estimated expenditure in excess of twenty-five thousand dollars (\$25,000) for the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall submit for acceptance by SVCE in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by Contractor, and all costs therefor shall be included in the price of the Contract. Nothing in this provision shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this provision shall be construed to impose tort liability on SVCE or on any SVCE officer, agent, consultant, representative, or employee. All plans, processing and shoring costs are Contractor's

responsibility and must be included in Contractor's bid.

SECTION 400 - PROTECTION AND RESTORATION

400-1 GENERAL

All costs to the Contractor for protecting, removing, restoring, relocating, repairing, replacing, or reestablishing existing improvements shall be included in the Bid.

SECTION 402 - UTILITIES

402-1 LOCATION

Except as shown in the Plans or specified in the Special Provisions, the location and existence of underground utilities or substructures has not been obtained. Subject to Gov't Code Section 4215, the methods used and costs involved to locate existing elements, points of connection and all construction methods are the Contractor's sole responsibility. Accuracy of information furnished, as to existing conditions, is not guaranteed by SVCE. The Contractor, at its sole expense, must make all investigations necessary to determine locations of existing elements, which may include contacting Underground Service Alert/DigAlert and other private underground locating firm(s), utilizing specialized locating equipment, hand trenching, or both. For every Dig Alert Identification Number issued by Underground Service Alert during the course of the Project, the Contractor must submit to SVCE the following form. The Contractor shall be responsible for preserving the integrity of the existing underground utilities at the site.

UNDERGROUND SERVICE ALERT IDENTIFICATION NUMBER FORM

No excavation will be permitted until this form is completed and returned to SVCE.

Government Code Section 4216 *et seq.* requires a Dig Alert Identification Number to be issued before a permit to excavate will be valid.

To obtain a Dig Alert Identification Number, call Underground Service Alert at **811** a minimum of three (3) Working Days before scheduled excavation. For best response, provide as much notice as possible up to ten (10) Working Days.

Dig Alert Identification Number: _____

Dated: _____

("CONTRACTOR")

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

Note: This form is required for every Dig Alert Identification Number issued by Underground Service during the course of the Work. Additional forms may be obtained from SVCE upon request.

402-1.3 Entry by Utility Owners

The right is reserved to the owners of public Utilities or franchises to enter the Project site for the purpose of making repairs or changes in their property that may be necessary as a result of the Work as well as any other reason authorized by SVCE. When the Contract Documents provide for the Utility owners to alter, relocate or reconstruct a Utility, or when the Contract Documents are silent in this regard and it is determined by SVCE Engineer that the Utility owners must alter, relocate or reconstruct a Utility, the Contractor shall schedule and allow adequate time for those alterations, relocations or reconstructions by the respective Utility owners. SVCE employees and agents shall likewise have the right to enter upon the Project site at any time and for any reason or no reason at all.

402-2 PROTECTION

If Contractor damages or breaks the Utilities, it will be the Contractor's responsibility to repair the Utility at no cost to the Utility or SVCE.

402-3 REMOVAL

Facilities encountered during the prosecution of the Work that are determined to be abandoned shall be removed by the Contractor as required for the Work, unless directed otherwise by SVCE Engineer. The remaining portion of the existing Utility which is left in place shall be accurately recorded, in elevation and plan, on the control set of Contract Drawings.

402-4 RELOCATION

The Contractor shall cooperate fully with all Utility forces of SVCE or forces of other public or private agencies engaged in the relocation, altering, or otherwise rearranging of any facilities that interfere with the progress of the Work. The Contractor shall schedule the Work so as to minimize interference with the relocation, altering, or other rearranging of facilities.

402-6 COOPERATION

The Contractor's attention is directed to the fact that Work may be conducted at or adjacent to the site by other contractors during the performance of the Work under this Contract. The Contractor shall conduct its operations so as to cause a minimum of interference with the work of such other contractors, and shall cooperate fully with such contractors to provide continued safe access to their respective portions of the site, as required to perform work under their respective contracts. Compensation for compliance shall be included in the various items of the Work, and no additional compensation shall be allowed therefor.

402-7 NOTIFICATION

The Contractor shall notify SVCE Engineer and the owners of all Utilities and substructures not less than forty-eight (48) hours before starting construction. The following list of names and telephone numbers is intended for the convenience of the Contractor and is not guaranteed to be complete or accurate:

Agency: _____
Phone Number: _____
Contact Person: _____

Agency: _____
Phone Number: _____
Contact Person: _____

Agency: _____
Phone Number: _____
Contact Person: _____



Staff Report – Item 1g

Item 1g: Authorize the Chief Executive Officer to Execute an Amended and Restated Agreement with IP Darden III, LLC for 91.48 MW of Solar Photovoltaic Energy and a 91.48 MW Co-located, Four-Hour Battery Energy Storage System to Extend the Term of the Original Agreement by Five Years, Reduce the Price and Increase the Lifetime Not-to-Exceed Amount to \$440,000,000

From: Monica Padilla, CEO

Prepared by: Kris Van Vactor, Director of Power Resources
Britta Bradshaw, Power Resource Manager

Date: 01/14/2026

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy (SVCE) Board of Directors (“Board”) delegate authority to the Chief Executive Officer (CEO) to finalize and execute an Amended and Restated Power Purchase Agreement (PPA), and any non-substantive subsequent amendments and ancillary agreements, for co-located solar energy and battery energy storage system (BESS) with Intersect Power, LLC for IP Darden III, LLC (“Amended Agreement”), to allow for an extension of the agreement term and a reduction of the price per megawatt-hour for energy delivered from the solar resource and capacity paid for the BESS within the following parameters:

- No change to solar capacity and expected energy of 91.48 megawatt (MW) or approximately 248,000-270,000 megawatt hours (MWh) per year of expected renewable and clean energy;
- No change to BESS capacity and discharge hours of 91.48 MW or 365.92 MWh 4-hour;
- 5-Year term extension from ten years to fifteen years with the same expected Commercial Operation Date (COD) of June 1, 2028 and a new term through May 31, 2043;
- A 4.7% reduction in the price for solar and a 3.5% reduction in the BESS price; and
- Increase in the total amount not-to-exceed (NTE) from \$330,000,000 to \$440,000,000 NTE for the Amended Agreement.

Execution of the Amended Agreement will help SVCE meet SVCE Board-directed clean energy targets, California’s Renewable Portfolio Standard (RPS) requirements for Portfolio Category Content One (“PCC1”) resources and clean procurement mandates, and Resource Adequacy (RA) requirements, including Mid-Term Reliability requirements for new clean capacity. The Amended Agreement is provided in substantive form (Attachment 1). Any substantive future amendments to the recommended contract shall be subject to the not-to-exceed (NTE) limit and authority set forth in Resolution 2022-08 or any subsequent authority.

BACKGROUND

In August 2024, SVCE issued a Request for Offers (RFO) for long-term clean resources. The goal of the RFO was to secure a diverse set of renewable energy and clean capacity to meet SVCE’s RPS and carbon-free objectives, while also complying with California’s RPS and clean mandates. The Darden project was selected resulting from this RFO.

As a load serving entity (LSE), SVCE is subject to clean energy and RPS targets 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

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targets of 90% by 2035 and 95% by 2040 as provided for under Senate Bill 1020. Additionally, SVCE's Board set a 100% clean energy target on an annual basis and directed staff to achieve a 75% RPS in 2030-2034 (with a 10% margin of error) as approved by the Board in the [November 13, 2024 SVCE Board of Directors Meeting, Item 4](#).

Clean resources were also sought to meet obligations as ordered in the California Public Utilities Commission (CPUC) issuing Decisions (D.) 21-06-035 and (D.) 23-02-040—together, the Mid-term Reliability Procurement Orders (MTR Orders)—requiring CPUC-jurisdictional LSEs, such as SVCE, to procure and/or develop a collective 15,500 MW of new capacity by 2028. 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.

In support of SVCE's goals and mandates, SVCE has 26 long-term contracts for clean energy, capacity and/or reliability products totaling over \$3 billion over the life of the contracts. Currently, ten resources are online and estimated to meet approximately 45% of SVCE's retail sales in 2025 with the following RPS mix: Solar: 27%, Geothermal: 13%, Wind: 10%.

In 2030, when all resources are on-line, SVCE will have achieved an 84% RPS from long-term resources and approximately 60% of its peak capacity will be met from clean resources including paired and stand-alone storage. Tables 1 and 2 summarize the PPAs executed to date to meet RPS, resource adequacy and/or MTR requirements.

Table 1: Board Authorized Clean Energy Contracts - Online

	Seller	Project Name	Technology	Genera- tion MW	Storage MW	Storage MWh	Term (years)	SVCE Board Appro- val
1	MN8	Slate	Solar + Storage	93	46.5	186	17	Oct-18
2	Ormat	Casa Diablo	Geothermal	7			10	Feb-20
3	Atlantica	Coso	Geothermal	43.8			15	Mar-20
4	Leeward	Rabbitbrush	Solar + Storage	40	8	20	15	Apr-20
5	NextEra	Yellow Pine	Solar + Storage	50	26	104	20	May-20
6	AES	Mountain View	Wind	33.3			20	Apr-21
7	Clearway	Victory Pass	Solar + Storage	100	25	100	15	May-21
8	Terra-Gen	Cameron Crest	Wind	77.7			15	May-21
9	AES	Baldy Mesa (RA-only)	Storage	0	75	300	10	Sep-22
10	Middle River Power	Hanford	Thermal + BESS	99.4	131.4	131.4	12	Apr-23

Table 2: Board Authorized Clean Energy Contracts - In Development

	Seller	Project Name	Technology	Genera- tion MW	Storage MW	Storage MWh	Term (years)	SVCE Board Appro- val	Status
1	Avantus	Aratina	Solar + Storage	80	50	200	20	Jun-20	Construction
2	SB Energy	Angela	Solar + Storage	20	10	40	15	Mar-21	Construction
3	Origis	San Luis West	Solar + Storage	62.5	15.63	62.5	15	Apr-21	Pre- construction
4	Rev Renewables	Tumbleed	Long Duration Storage	0	15.94	127.5	15	Feb-22	Construction
5	Ormat	Geothermal Portfolio	Geothermal	16.75			20	Jun-22	Pre- construction
6	OME	Fish Lake	Geothermal	1.82			20	Jun-22	Pre- construction
8	NextEra	Grace	Solar	120			15	Aug-23	Pre- construction

9	NextEra	Yellow Pine III	Storage	0	24	96	15	Aug-23	Pre-construction
10	NextEra	Yellow Pine III	Long Duration Storage	0	9	72	15	Apr-25	Pre-construction
11	Pattern	SunZia South	Wind	70.2			15	Nov-23	Construction
12	Pattern	SunZia North	Wind	29.8			15	Nov-23	Construction
13	VCI Energy	Garden Green Solar	Solar + Storage	50	50	200	10	Oct-24	Pre-construction
14	Pattern	SunZia South Incremental	Wind	17.54			10	May-25	Construction
15	Pattern	SunZia North Incremental	Wind	7.46			10	May-25	Construction
16	Intersect Power	Darden III	Solar + Storage	91.48	91.48	365.9	10	Sep-25	Pre-construction

SVCEs Board of Directors approved the original Darden III PPA at the August 13th board meeting ([August 13, 2025 Board of Directors Meeting, Item 5](#)). In December 2025, IP Darden III approached both 3CE and SVCE to offer a more favorable rate for an extended term. The lower rate will improve economics, reduce risk to SVCE’s portfolio, and aid in meeting compliance obligations and board directives; hence Staff’s recommendation to pursue board approval of the Amended Agreement.

ANALYSIS & DISCUSSION

IP Darden is a 1,150 MW solar and 1,150 MW storage new-build resource in Fresno County. Intersect Power ("Intersect") is the parent company and developer of IP Darden.

SVCE is among multiple off-takers of IP Darden, with a share of 91.48 MW of battery energy storage and 91.48 MW of solar energy, and approximately 248,000-270,000 MWh of PCC1 RPS energy and renewable energy certificates (RECs) annually, which will account for approximately 6% of SVCE’s retail sales and count towards annual and long-term RPS requirements.

The resource is offered at a fixed price in dollars per MWh for solar generation and dollars per kilowatt-month (\$/kW-mo) for storage capacity. The original PPA has a ten-year term with an expected commercial operating date (COD) of June 1, 2028. The Amended Agreement would have a fifteen-year term. As part of the agreement to extend the contract term, IP Darden has agreed to reduce the solar rate by 4.7% and BESS rate by 3.5%, providing a significant reduction in annual cost to SVCE’s customers. The five-year extension does necessitate an increase in the agreement’s NTE of \$110,000,000.

Table 3 is a summary of the key features of the Darden PPA.

Table 3: Summary of Darden Agreement

Counterparty	IP Darden III, LLC
Parent Company	Intersect Power, LLC
Product	New build solar PV PCC1 RPS Energy and lithium-ion 4-hour battery storage
Need and/or Compliance Obligation	SVCE’s 100% Clean energy goal and RPS target SB100, SB350 and B1020 MTR Order and RA starting in 2028
Expected Delivery Term	15 years, June 1, 2028, through May 31, 2043.

Contract Capacity	91.48 MW solar, 91.48 MW, 4-hour storage (total capacity to be contracted to SVCE at point of interconnection is 91.48 MW)
Location	Fresno County, CA
Percentage of Retail Load Served/RPS	5-6%

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. The Darden Agreement provides an estimated average of 260,000 MWh of RPS eligible energy, bringing SVCE's expected RPS in 2029 to 87%.

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). Darden is expected to come online in 2028, helping meet long-term obligations in CP6 (2028-2030). With the inclusion of Darden, SVCE's **long-term RPS** is 79.4% in CP6, which is above California's mandated **long-term RPS** requirement of 37%. This represents SVCE's position assuming all contracts are operational based on the online dates specified in the PPAs and that the resources perform consistent with the generation profiles provided in the PPAs as well. Table 4 shows SVCE's progress towards meeting its RPS and clean goals.

Table 4: Impact to SVCE RPS and Clean Energy Targets

Calendar Year	SB 100 RPS Target	Board RPS Target	Expected SB 100 ¹ Position (without Darden)	SB 100 ¹ Position with Darden	Clean Position (expected, without Darden)	Clean Position with Darden
2028	55%	57%	80%	86%	90%	96%
2029	57%	59%	81%	87%	89%	95%
2030	60%	65-75%	78%	84%	81%	87%

¹ RPS figures provided in this table represent SB 100, which provides an overall RPS target. SB 350 targets are not included in the table; SB 350 applies a requirement that 65% of the SB 100 RPS target be met by long-term resources. With the inclusion of Darden, SVCE is projected to achieve an RPS position of 79.4% from long-term contracts.

Mid-term Reliability Procurement Order & Resource Adequacy Capacity

SVCE has made significant progress towards meeting its allocation in all tranches of procurement mandates per the MTR Order. SVCE is slightly deficient in meeting its generic 2026, 2027 and 2028 requirements, which orders the procurement of new clean energy capacity including standalone storage. The project will have Full Capacity Deliverability Status (FCDS) from the CAISO and be able to provide resource adequacy attributes to help SVCE meet its annual compliance obligation. Specifically, IP Darden will contribute approximately 78 MW of qualifying capacity, helping to meet SVCE's obligation in 2028 and helps close SVCE's overall obligation.

SVCE has an obligation to procure sufficient capacity to meet grid reliability as prescribed by the CPUC's RA Program. Resources such as Darden, which pair solar and storage, provide a profile that is beneficial to SVCE's portfolio under the state's Slice of Day RA program.

Clean Energy and Capacity

SVCE works towards a 100% clean energy goal measured annually. This will be 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 energy. Strategically, resources that 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 co-located, helps achieve a more sustainable grid by pushing out solar generation into 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 helping us build a pathway to 24/7 clean energy.

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 2024, 69% of SVCE's requirements were from RA-only contracts. With the Darden Agreement into the portfolio, Energy Source from Solar increases by up to 6% and peak capacity from clean sources increases by 4%. Table 5 is an illustration of SVCE's energy and capacity portfolio in 2028.

Table 5: Energy and RA Capacity Portfolio with Darden – Estimated for 2030

Estimated for 2030	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	412	10%	7%
Solar with Darden	2218	51%	12%
Wind	713	16%	10%
Large Hydroelectric	915	21%	0%
Battery Storage with Darden	0	0%	4%
Natural Gas RA-only	0	0%	52%
Hanford - Natural Gas	70	2%	14%
Total	4,328	100%	100%

Given the complementary solar and storage generation profile, the PPA helps balance clean energy throughout the day. By charging the battery when solar energy is abundant, and discharging when there are fewer clean resources generating, co-located solar and storage facilities can provide clean energy in more hours, and help reduce solar curtailment in hours when solar energy is over-abundant. Tables 6 and 7 below show SVCE's hourly clean energy position without Darden (Table 6) and the impact of Darden in 2029 (Table 7).

Table 6: Expected SVCE Hourly Clean Energy Profile in 2029 without Darden Agreement

Hour Ending	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Month																								
1	25%	25%	26%	26%	26%	26%	26%	37%	64%	72%	61%	52%	46%	29%	55%	70%	54%	42%	42%	44%	50%	40%	39%	24%
2	23%	24%	24%	24%	24%	23%	27%	48%	78%	84%	70%	63%	40%	61%	70%	87%	61%	68%	51%	43%	52%	42%	25%	22%
3	31%	32%	33%	33%	32%	32%	68%	89%	109%	114%	120%	101%	92%	67%	88%	98%	104%	59%	42%	61%	55%	65%	40%	31%
4	37%	37%	37%	37%	36%	40%	84%	113%	125%	127%	130%	111%	114%	108%	113%	120%	114%	54%	65%	79%	78%	68%	35%	36%
5	40%	40%	39%	39%	38%	56%	113%	133%	136%	118%	135%	124%	97%	98%	114%	138%	136%	100%	57%	78%	90%	75%	52%	39%
6	41%	40%	37%	37%	37%	65%	109%	132%	134%	102%	103%	89%	64%	93%	124%	125%	119%	96%	63%	89%	92%	91%	67%	39%
7	35%	32%	30%	30%	29%	45%	82%	115%	93%	80%	67%	65%	89%	113%	112%	108%	102%	81%	63%	85%	72%	61%	51%	35%
8	30%	30%	30%	30%	30%	34%	71%	112%	94%	73%	56%	78%	86%	108%	107%	104%	96%	70%	80%	84%	73%	62%	32%	30%
9	32%	31%	31%	31%	31%	32%	60%	101%	105%	80%	73%	48%	67%	86%	102%	97%	84%	60%	82%	76%	56%	38%	34%	33%
10	37%	32%	32%	32%	33%	41%	48%	82%	107%	95%	72%	65%	46%	77%	95%	101%	70%	43%	87%	58%	46%	32%	41%	38%
11	31%	29%	31%	31%	37%	54%	51%	64%	83%	72%	57%	44%	34%	54%	79%	75%	67%	53%	42%	45%	51%	48%	48%	35%
12	26%	28%	27%	28%	28%	30%	30%	42%	66%	71%	48%	43%	37%	22%	53%	59%	60%	42%	53%	47%	48%	36%	43%	26%

Table 7: Net Change to Expected SVCE Hourly Clean Energy Profile in 2029 with Darden Agreement

Hour Ending	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Month																								
1	1%	1%	0%	0%	0%	0%	0%	0%	5%	6%	0%	-8%	-9%	-8%	-6%	8%	8%	12%	11%	6%	6%	12%	6%	0%
2	0%	0%	0%	0%	0%	1%	1%	2%	9%	11%	4%	-4%	-5%	-6%	-6%	13%	6%	14%	14%	12%	11%	7%	2%	0%
3	1%	0%	0%	0%	0%	2%	12%	12%	14%	16%	17%	11%	-2%	-3%	-6%	-8%	10%	2%	6%	15%	10%	15%	9%	1%
4	0%	0%	0%	0%	0%	0%	10%	17%	18%	18%	18%	19%	9%	-2%	-1%	-12%	-1%	21%	7%	18%	18%	18%	9%	0%
5	0%	0%	0%	0%	0%	1%	16%	20%	19%	20%	13%	0%	0%	-1%	-1%	18%	16%	9%	1%	19%	18%	19%	15%	0%
6	1%	0%	0%	0%	0%	5%	16%	19%	19%	10%	0%	0%	0%	0%	18%	18%	17%	12%	3%	17%	17%	17%	16%	0%
7	0%	0%	0%	0%	0%	2%	14%	21%	8%	0%	0%	0%	5%	18%	18%	17%	15%	12%	15%	16%	16%	16%	2%	0%
8	0%	0%	0%	0%	0%	1%	10%	19%	15%	-1%	-1%	-1%	0%	15%	17%	16%	15%	9%	15%	16%	16%	13%	2%	0%
9	1%	0%	0%	0%	0%	1%	9%	16%	18%	7%	-1%	-1%	-2%	1%	17%	16%	12%	13%	15%	16%	12%	1%	0%	3%
10	0%	0%	0%	0%	0%	0%	3%	11%	15%	15%	0%	-5%	-5%	-5%	5%	14%	5%	17%	17%	18%	13%	0%	0%	0%
11	1%	0%	0%	1%	3%	19%	6%	4%	11%	11%	-7%	-8%	-8%	-8%	6%	9%	8%	9%	2%	4%	1%	1%	14%	7%
12	0%	0%	0%	0%	0%	0%	1%	0%	5%	7%	1%	-10%	-9%	-10%	-8%	5%	11%	13%	10%	8%	6%	5%	10%	0%

PPA Project Selection Policy

On April 9, 2025, the Board adopted the PPA Project Selection Policy (“Policy”) which set evaluation criteria for new PPAs ([April 9, 2025 Board of Directors Meeting, Item 5](#)). The Darden PPA was shortlisted prior to the Board-adopted policy; however, the Agreement meets many of the Policy requirements including payment of prevailing wages.

Project Development Status

IP Darden is a new-build project in its early stage. The project has completed all permitting under the California Energy Commission (CEC) “Opt-In Certification program,” a new process offering streamlined permitting at the state-level for eligible new clean energy projects.

Impact of Federal Regulatory Uncertainty

While the solar and storage equipment will be manufactured within the U.S., the project may rely on foreign imports for project components, particularly for the battery. Potential federal tax changes, including potential tariffs on battery components, may impact the cost to Intersect Power to develop this resource. To account for this uncertainty, the contract includes a provision that allows the battery capacity price to adjust accordingly with changes to the tariffs from current levels. The maximum impact of this proposed rate adjustment is expected to fall within the total Not-To-Exceed threshold being requested herein.

Other federal tax incentives for renewable energy projects, such as the Investment Tax Credit (ITC), will also see changes under federal policy. However, Darden is expected to maintain its expected tax benefits due to its near-term construction timeline.

ALTERNATIVE

While the Amended Agreement is beneficial to meeting overall RPS goals, clean energy, and MTR goals, in a more cost effective manner, the Board may decide not to approve this amended and restated agreement and instead continue with the original agreement at a higher PPA rate.

Agenda Item: 1g**Agenda Date: 1/14/2026**

Staff does not recommend this alternative, as the updated agreement offers significant value and reduced risk to SVCE customers.

STRATEGIC PLAN

Board approval to delegate authority to the CEO to execute the Amended Darden Agreement will enable staff to meet the current board directed clean targets and California RPS requirement, consistent with goals and objective as outlines in SVCE's Strategic Plan, in particular, Goal #4: Acquire power supply resources in a cost-effective manner to meet legislative and regulatory obligations, Board directives and customer specific products.

FISCAL IMPACT

IP Darden is slated to come online during fiscal year 2027-2028 at which point the cost will be included in the operating budget. Execution of the Amended Agreement will result lower per fiscal year cost at that time.

ATTACHMENT

1. IP Darden III First Amendment to the PPA – redacted version

**FIRST AMENDMENT
TO
RENEWABLE POWER PURCHASE AGREEMENT**

This First Amendment to Renewable Power Purchase Agreement (“**First Amendment**”) is entered into as of the last dated signature on the signature page hereto (“**First Amendment Effective Date**”), by and between Silicon Valley Clean Energy Authority, a California joint powers authority, (“**Buyer**”) and IP Darden III, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. Seller and Buyer are parties to that certain Renewable Power Purchase Agreement dated as of October 23, 2025 (the “**PPA**”);
- B. The Parties have agreed to revise certain provisions of the PPA; and
- C. In connection with such revision to the PPA, the Parties desire to amend the PPA as set forth herein by executing and delivering this First Amendment.

NOW, THEREFORE, in consideration of the recitals above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

- 1. Defined Terms and Phrases.** The capitalized terms and phrases used in this First Amendment but not defined herein shall have the meaning stated in the PPA.
- 2. Amendments to PPA.** Commencing on the First Amendment Effective Date, the PPA shall be amended as follows:
 - a. Cover Sheet – Delivery Term.** The reference to a Delivery Term of “Ten (10) Contract Years” in the Cover Sheet of the PPA is hereby deleted and replaced in its entirety with “Fifteen (15) Contract Years”.

b. Cover Sheet – Expected Energy. The Expected Energy table in the Cover Sheet of the PPA is hereby deleted and replaced in its entirety with the table below:

Contract Year	Expected Energy (MWh)
1	████████
2	████████
3	████████
4	████████
5	████████
6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████

c. Cover Sheet – Guaranteed Efficiency Rate. The Guaranteed Efficiency Rate table in the Cover Sheet of the PPA is hereby deleted and replaced in its entirety with the table below:

Contract Year	Guaranteed Efficiency Rate
1	████████
2	████████
3	████████
4	████████
5	████████
6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████

d. Cover Sheet – Contract Price. The Renewable Rate and Storage Rate tables in the Cover Sheet of the PPA are hereby deleted and replaced in their entirety with the below:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 15	[REDACTED]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	[REDACTED]

e. Definitions – “Contract Year.” The reference to “midnight” in the definition of “Contract Year” in the PPA is hereby deleted and replaced in its entirety with “11:59 PM Pacific Prevailing Time”.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. General.

- a. **Representations Regarding this First Amendment.** Each Party represents and warrants that it is authorized to enter into this First Amendment, that this First Amendment does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such Party to perform its obligations hereunder, and that this First Amendment represents its valid and binding obligation, enforceable against it in accordance with its terms.
- b. **No Other Amendments.** Except as expressly set forth herein, this First Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the Parties under the PPA. This First Amendment shall be governed in all respects by the terms of the PPA *mutatis mutandis*, which remains in full force and effect and unmodified except as expressly set forth herein.
- c. **Effectiveness of First Amendment.** This First Amendment shall be effective on the First Amendment Effective Date and shall be binding upon the Parties and their respective permitted successors and assigns.
- d. **Entire Agreement.** This First Amendment contains the complete agreement among Parties with respect to the subject matter hereof and supersedes any prior understandings, agreements or representations by or between the Parties, whether written or oral, or any prior course of dealing among them, which may have related to the subject matter hereof in any way.
- e. **Conforming References.** Upon the effectiveness of this First Amendment, each reference in the PPA to “this Agreement,” “herein,” or words of like import shall mean and be a reference to the PPA as amended by this First Amendment.
- f. **Counterparts.** This First Amendment may be executed in one or more counterparts, each of which, when executed, shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same instrument. Delivery of an executed counterpart of a signature page to this First Amendment by electronic means (e.g., email or PDF) will be effective as delivery of an original counterpart to this First Amendment.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the Parties have caused this First Amendment to be duly executed as of the First Amendment Effective Date.

IP Darden III, LLC, a Delaware limited liability company

Silicon Valley Clean Energy Authority, a California joint powers authority

By: 
Name: Simon Ross
Title: Chief Commercial Officer
Date: December 11, 2025

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

Approved as to form:

By: 
Name: Katrina Rymill
Title: Chief Financial Officer
Date: December 11, 2025

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



Staff Report – Item 1h

Item 1h: Receive Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Sally Meadows, Executive Committee Vice Chair

Date: 1/14/2026

The Executive Committee met December 5, 2025, and addressed the following: a request to support the updated Fiscal Year 2025-2026 Budget and 2026 rate changes, and received information on SVCE's Community Grants Program development.

The Committee received a report from Monica Padilla, Chief Executive Officer, on upcoming December Board of Directors workshops, and an update from Zoe Elizabeth, Director of Decarbonization Policy and Community Strategies, on SVCE's headquarters building plan and timeline.

Amrit Singh, Chief Financial Officer, presented a request for the Executive Committee's recommendation that the Board of Directors approve the proposed updated Fiscal Year 2025-2026 budget. Highlights of the proposed budget included:

- Increasing the withdrawal from reserves from the adopted budget level of \$40.1 million to \$60.5 million after updating for revenues, power supply costs, and updated earnings forecasts;
- Additional transfer of \$5.5 million to the new headquarters building fund;
- Setting SVCE generation rates starting in January 2026 at a 1% discount to comparable PG&E's generation rates and issuing a monthly bill credit of \$12 dollars to customers enrolled in PG&E's California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA); and
- Proposed staff recommendation of a new GreenPrime rate premium of \$0.0074/kWh (\$7.40/MWh) effective January 2026.

Committee members discussed staff's recommendation and provided comments and questions on the proposed rates, recommended days of cash on hand, and impacts to SVCE's credit rating. Following a robust discussion, the Committee voted unanimously to recommend that the Board approve staff's recommendation to approve the proposed budget and rate changes which were approved at the December Board meeting.

Jessica Cornejo, Decarbonization and Community Strategies Lead, presented an informational item on SVCE's Community Grants Program development which included a recap of historical community grant cycles, including competitive and non-competitive grant awards to SVCE member agencies, funding allocation breakdown, an overview of eligible projects and requirements, and a review of timeline and activities.

Materials from this meeting can be found on SVCE's website: [SVCE Executive Committee Meeting, December 5, 2025](#)

The next meeting of the Executive Committee will be held in January 2026; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 1i

Item 1i: Receive Additional Committees Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Sr. Executive Assistant and Board Clerk

Date: 1/14/2026

There are no reports for the Finance and Administration Committee and the Audit Committee, as they have not met since the last report. Both committees are expected to meet in February 2026.

Materials for these meetings will be posted 72 hours in advance of the meeting dates.



Staff Report – Item 1j

Item 1j: Receive California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Monica Padilla, CEO

Date: 1/14/2026

Per direction from the Silicon Valley Clean Energy (SVCE) Board of Directors (“Board”) on December 9, 2020 for the Chief Executive Officer 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, December 17, 2025.

Attached is a December summary report from General Manager Alex Morris; materials from the December board meeting can be found here on the CC Power website: [CC Power Meeting, 12/17/25](#)

The next meeting of the board will be January 28, 2026 at 1:00 p.m.; meeting materials can be found on the CC Power website: <https://cacommunitypower.org/meetings/>

ATTACHMENT

1. CA Community Power Board Meeting Summary from General Manager Alex Morris, December 17, 2025

California Community Power

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

TO: Board of Directors and Alternates **DATE:** 1/5/26
FROM: Alex Morris – General Manager
SUBJECT: **Report on Regular Board of Directors Meeting – December 17, 2025**

The California Community Power (CC Power) Board of Directors held a meeting on December 17, 2025, 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 Agenda** - The Board approved the following items:
 - Minutes of the Regular Board Meeting held on November 19, 2025
 - Waiver of 60-day Member Notice (*CC Power JPA Agreement Section 6.02*) for Board Consideration of Hydrostor Willow Rock Contract in January 2026
- **Regular Agenda Items:**
 - **Resolution 25-12-01 – Approving and Adopting the CC Power 2026-2030 Strategic Priorities:** The Board unanimously adopted four 2026-2030 strategic priorities for CC Power. These priorities will be implemented in 2026 and through annual work-planning and budget cycles. These priorities are deemed complimentary to members and align with the value propositions contemplated for CC Power. The priorities are to:
 - Successfully administer existing energy and power contracts;
 - Procure and manage contracts for specific cases of wholesale power resources;
 - Assess and procure emerging, higher risk, and unusual technologies or projects; and
 - Lead member-CCA power asset ownership efforts.

These priorities will be incorporated into an updated CC Power 2026-2030 Strategic Plan and considered by the Board.

- **Resolution 25-12-02 – Approval of Bulk Buy of Power Price Forecast and Reports:** The Board approved a ‘bulk-buy’ of a power price forecast and informational reports from Wood Mackenzie. Eight members are participating in this bulk-buy, yielding a notional savings per member of approximately \$100,000.

CC Power also uses any forecasts and reports to further support and augment its analytical and project valuation efforts. This spending was planned in the budget, and the execution of the contract requires member-participation confirmations and Board approval.

- **Resolution 25-12-03 – Approval of Tenaska Power Services for Scheduling Coordinator Services for Tumbleweed Energy Storage Project:** The Board authorized execution of the proposed contract with Tenaska Power Services (TPS), with a three-year notional value of \$275,000. These costs will be recovered from the Tumbleweed Energy Storage Project participants and were anticipated in the 2025-2026 budget. Members solicited for these services and selected TPS, from amongst eight competing offers, based on their offering and capabilities as a well-established scheduling coordinator. The agreement with TPS was reviewed by members' staff through the Tumbleweed Operations Advisory Subcommittee (OAC).
- **Resolution 25-12-04 – Approval of First Amendment to Master Services Agreement with Ascend Analytics LLC and Work Order for SmartBidder for Tumbleweed Energy Storage Project:** The Board authorized execution of an contract amendment and work-order with Ascend Analytics to procure and use Ascend's 'SmartBidder' service for formulating bids for the Tumbleweed Energy Storage Project. The Tumbleweed project will be one of the first 8-hour lithium-ion energy storage projects online in California, and bid-strategies for such a resource can be complex and have material implications. The notional value of the three-year contract is \$245,484. These costs will be recovered from the Tumbleweed Energy Storage Project participants and were anticipated in the 2025-2026 budget. Ascend was selected through a competitive solicitation process based on its offer and experience and expertise. The agreement with Ascend was reviewed by members' staff through the Tumbleweed Operations Advisory Subcommittee (OAC).
- **2026 Officer's Election Update:** Chair Lori Mitchell (SJCE) briefed the Board on the upcoming January 2026 elections for new CC Power Officers. Officer roles include Chair, Vice-Chair, Treasurer, and Secretary.
- **General Manager Report:**
 - Solicitation for Power Projects – CC Power received 162 offers to the recent Request for Proposals. CC Power will work with members to short-list projects and to explore interest in joint-procurement for such projects. This work was authorized as part of the 2025-2026 budget and helps members assess an array of power project opportunities, including for ITC/PTC eligible solar or wind, standalone storage, geothermal, hydroelectric, biomass, build-transfer projects that CCAs could own, and or emerging technologies.
 - Geothermal Education Session on January 9th – Members and CC Power will host a virtual education session on geothermal development matters, with a focus on California, in order to further inform members about timelines, challenges, and contractual approaches for geothermal projects agreements. This education session is designed to inform any future consideration of Geothermal Collaboration Agreements that CC Power is negotiating as part of the Geothermal Strategic Origination Phase 2a. Presenting members will include CleanPowerSF and Sonoma Clean Power.

- Work-Planning and other activities planned for Q1-Q2 2026 – In 2026, CC Power will again meet with members to inform work-planning, budgeting, and finalization of the revised strategic plan. Through member meetings, including meetings with Board members as well as with members' Procurement Directors or staff, CC Power will develop draft work-plans that align with the recently adopted 2026-2030 Strategic Priorities. In early 2026, CC Power will also bring select project agreements to the Board for consideration.



Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Monica Padilla, CEO

Date: 1/14/2026

REPORT

Staff Updates

Blake VandeVelde joined SVCE December 8, 2025 as Manager of Information Technology (IT). Blake has over 20 years of IT experience working at companies like DocuSign, DRIVE.AI and COHERENT and brings a strong technology background to the SVCE team.

Personnel Officer Update

SVCE lost two staff members Gia Ilole, Director of Human Resources, and Nalini Pillay, Deputy Board Clerk/Administrative Assistant. Staff will start the process to fill the two positions as soon as practical.

Marlena Lopez, formerly SVCE's Human Resources (HR) Administrative Assistant, has been promoted to HR Operations Manager. Marlena has taken on more responsibilities and demonstrated her effectiveness in carrying out many of SVCE's HR duties.

To ensure continuity and the necessary support for SVCE staff, the HR function will move under the direction of Nik Zanotto, Director of Operations.

An updated organization chart is provided as Attachment 1.

On December 11, 2025, the SVCE leadership team recognized key staff at an awards banquet for their contributions and demonstration of SVCE's core values which includes effectiveness, continuous learning, collaboration, stakeholder service (internal and external) and all-around superstar. The award recipients were based on peer nominations. The 2025 award winners include:

Marlena Lopez, for Effectiveness
Jessica Cornejo, for Continuous Learning
Citlalli Sandoval, for Collaboration
Colleen McCamy, for Stakeholder Service – internal
Peyton Parks, for Stakeholder Service – external
Leanna Huynh, for All-Around Superstar

Power Resources & Clean Energy Update

2026 looks to be an exciting year for SVCE with several projects under power purchase agreements (PPAs) slated to come online including: 1) Angela, a 20 MW solar with 10MW storage project, is looking to start in May, 2) Aratina, 80 MW solar with 50MW storage, is scheduled for June, and 3) SunZia, 125 MW wind, should begin delivery in November 2026. Staff will keep the Board posted on upcoming ribbon cutting events.

In terms of overall clean, SVCE is expected to finish 2025 with 105% overall clean position consistent with Board-approved targets, while 2026 looks similar with expected deliveries setting the portfolio at around 105%.

Agenda Item: 2**Agenda Date: 1/14/2026**

In December, SVCE executed agreements with PG&E to receive allocations of carbon-free resources (hydro and nuclear). SVCE has the opportunity to receive this carbon-free energy at no premium for resources covered by the Power Charge Indifference Adjustment ("PCIA") on customer bills. These resources help SVCE meet its clean targets.

Budget and Financial Outlook Update

Treasurer's Report: The Board packet includes the Treasurer's report, which shows a projected ending Net Position as of November 30, 2025, of \$522.6 million, an increase of \$7.3 million from the prior month.

Financial Levers: Staff is finalizing notes and findings from the Special Board Meeting/Workshop held on December 12, 2025 to discuss financial levers and SVCE's value proposition. In February, staff intends to return to the Finance and Administration Committee and to the Executive Committee followed by the Board with additional analyses and updates in March 2026.

PG&E's Base Service Charge and New Rates

Starting this month, residential customers will begin to receive notifications from PG&E about the introduction of the Base Service Charge, which will take effect on bills in March 2026. This was formerly known as the Income Graduated Fixed Charge. The Base Service Charge is not a new fee; instead, it is made up of costs currently billed through volumetric transmission and distribution ("T&D") rates on the PG&E side of customer bills. These are costs associated with infrastructure, maintenance, energy programs, PG&E call center services and billing. The introduction of the Base Service Charge recategorizes these costs into a flat fee instead of the current volumetric fee. Most residential customers will see a monthly Base Service Charge of \$24. Customers enrolled in CARE will see a \$6 monthly charge and FERA customers will receive a \$12 charge. Updates will be made to the SVCE website to reflect this billing change and educate customers.

SVCE received PG&E electric generation rates for 2026 and staff are working to finalize and implement the rates in the SVCE billing system. The rates have come in as expected, with a ~~2340%~~ decrease ~~in the generation rate,~~ ~~inclusive of the PCIA, for SVCE customers.~~ When combined with PG&E's rate increase of ~~75%~~ on the transmission and distribution charges, customers are expected to see a ~~46%~~ decrease overall on monthly bills. The new rates, bill comparisons and a press release will be issued the week of January 12.

Customer Success Department UpdatesEnhancing Customer Savings with Automated Increases to Electric Baseline Allowance

SVCE has worked out an arrangement with PG&E to update electric baseline allowances automatically for customers who are installing heat pump HVAC systems through SVCE's programs. A baseline allowance determines the amount of energy that customers receive at the lowest price. Updating the electric baseline allowance for customer homes with new heat pumps is crucial, as standard electric allowances often don't match new (higher) usage, leading to higher costs in more expensive tiers.

Previously, customers had to call PG&E directly to request this update, which was a confusing and burdensome process. SVCE and PG&E have now retroactively updated baseline allowances for 1,700 customers who have previously installed a heat pump HVAC system through an SVCE program. And starting in 2026, customers who install a heat pump HVAC through an SVCE rebate or direct installation program will have their baselines updated automatically, removing a key friction point and directly enabling maximum savings. This is a key change that helps offset customer concerns regarding high operational costs of electrification.

Billing Update

New Rate Comparison Tool - In late December, SVCE soft-launched a new digital Rate Comparison Tool. This educational tool is designed to help customers compare rate options and explore how electrification can help them save on their electricity bill. The tool can be accessed on the SVCE website www.ehub.svcleanenergy.org/rates.

Press and Media**Media Mentions**

- [Trump administration sues Morgan Hill, Petaluma over natural gas bans](#), The Mercury News, 01-05-26
- [Beyond the EV: How Integrated DERs are Defining the Future of Energy Flexibility Globally](#), ev.energy, 12-17-25
- [Los Altos OKs awaited electrification rebate program for residents](#), Los Altos Town Crier, 12-16-25
- [Equitably Transitioning to Clean Water Heating in the Bay Area: State of Play for 2026](#), SPUR, 12-15-25
- [California Authority to Sell \\$950 Million of Green Bonds to Prepurchase Power](#), MarketScreener, 12-02-25
- [Sam Wevers, director of product for Lunar Energy, on using AI to optimize residential battery and solar power systems](#), Forbes Climate Newsletter, 11-24-25
- [Sunnyvale awarded \\$1.1M grant for clean energy initiatives](#), Easy Bay Times, 11-23-25
- [Divided MCE board creates finance committee](#), Marin Independent Journal, 11-22-25
- [Anticipating Campbell Library reopening like a suspense novel, delayed to early next year](#), San Jose Spotlight, 11-22-2025
- [The Blueprint for Mass-Market EV Load Management Participation](#), ev.energy, 11-20-25

Recent & Upcoming Events

No events upcoming in January 2026

On December 6, 2025, the Campbell Chamber of Commerce held its annual Carol of Lights event—this year, featuring an opportunity for families to take pictures with Santa in the SVCE Dream Home. Hundreds of attendees visited the Dream Home and experienced holiday festivities in addition to the benefits of all-electric living. The photos below feature the Dream Home seasonal decorations and SVCE staff with the Campbell Chamber event coordinator.



Agenda Item: 2**Agenda Date: 1/14/2026**Regulatory:

At the federal level, the Federal Energy Regulatory Commission (FERC) released an Advanced Notice of Proposed Rulemaking on large loads interconnecting to the transmission system. The potential rulemaking explores federal preemption of interconnection for large loads with the goal of fast-tracking interconnection for certain large loads. FERC received comments from more than 160 organizations about the proposed rulemaking, which some tech companies supporting efforts to incentivize co-locating data centers and power plants and others like the National Association of Regulatory Utilities urging caution on federal preemption.

Provider of Last Resort: On December 12, 2025, the CPUC issued a Phase 2 Proposed Decision, adopting guidelines for any future application of a non-IOU entity seeking POLR status. Because no non-IOU currently wants to become POLR, the PD will close the proceeding, but should a non-IOU want to apply to become POLR, the PD provides guidelines for that application.

PCIA: On December 1, 2025, CalCCA filed a Petition for Writ of Review with the California Court of Appeal, Third District, challenging the CPUC's Phase 1 decision that retroactively changed the methodology used to calculate the Power Charge Indifference Adjustment (PCIA). Key arguments are that the retroactive application constitutes general ratemaking, and that the decision was not based on substantial evidence.

Legislative:

The state legislature reconvenes on January 5, 2026, for the start of the second year of the two-year legislative session. On January 10, 2026, the Governor will release his January Budget proposal, which kicks off the budget setting process at the state legislature. The state legislature has until June 15, 2026, to adopt the final budget. The Legislative Analyst's Office is projecting a \$18 billion budget deficit for the state next fiscal year.

Congress is debating potential reforms to streamline permitting of energy projects. The House is expected to pass H.R. 4776, the SPEED Act, which streamlines the National Environmental Protection Act (NEPA) for energy projects. The Senate is expected to broaden the conversation to other permit streamlining measures.

Local Policy UpdatesLocal Energy Code Enhancements

The building code cycle is complete. However, member agencies that did not adopt a local code enhancement alongside the state building code can do so at any time. SVCE staff will continue to provide technical support as needed. In addition, SVCE staff is working to support permit modernization, outreach, and education efforts in all 13 jurisdictions for other initiatives that support cost-effective electrification.

On January 5, the Trump Administration filed a lawsuit against Morgan Hill and Petaluma related to their all-electric new construction ordinances ([complaint here](#)). The lawsuit focuses on local ordinances that the jurisdictions passed in 2019 (Morgan Hill) and 2021 (Petaluma). The Morgan Hill City Attorney Donald Larkin reported to the San Jose Mercury News on January 6th that "since the court's decision on Berkeley's ordinance, [Morgan Hill] has approved projects that include gas infrastructure. Further Larkin stated, "While we are still reviewing the complaint, this lawsuit appears to be an unnecessary effort to require the City to follow laws with which the City is already in compliance."

While Morgan Hill's ordinance is structured differently from the most recent model codes SVCE and PCE have worked with member communities to adopt, SVCE will monitor the lawsuit and SVCE staff is available to answer questions and can also connect any interested City Attorneys to SVCE's on-call Special Counsel with expertise on these topics.

New SVCE Headquarters

Staff continues to make progress on the development of the new SVCE Headquarters. Item 1f on the Consent Calendar of this evening's meeting is a contract for the construction of the office and Board chamber. This contract was selected after a detailed competitive process described in the staff report for the item. SVCE continues to move through the permitting process with the City of Sunnyvale. Under Sunnyvale rules, the

inclusion of the Board chamber constitutes a change of use for the property and required a zoning administrative hearing. The change of use was approved in a hearing on December 10th. SVCE anticipates one additional set of comments from Sunnyvale staff that will require minor amendments to the construction plans.

The project is currently on schedule to complete construction in time for a July 1st move in date. If the permit faces further delays, the timeline may be extended.

Look Ahead Update

Staff continues to plan for Board and committee meetings into the new year. Below is a preview of what’s ahead for the Board from February through April 2026:



ATTACHMENTS

1. SVCE Organization Chart
2. SVCE Clean Power Update, January 2026
3. Regulatory and Legislative Update, January 2026

Exhibit 1 - CEO Agreements Executed Under Delegated Authority

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

Type	Consultant	Description	Compensation	Term	Authority
Agreement	Town of Monte Sereno	Member Agency Grant Program	NTE - \$144,982	12/1/2025 - 12/31/2028	Board Approved (3/2025)
Amendment	Bluepoint Planning	Building Electrification Engagement Services	Increased NTE - \$210,000	No Change	CEO Spending Authority
Agreement	Beth Sussman Consulting	Leadership Development Support, Training and Coaching	NTE - \$90,000	1/1/2026 - 12/31/2026	CEO Spending Authority
Agreement	Craftsman Technology Group	Salesforce Consulting	NTE - \$48,000	1/1/2026 - 12/31/2026	CEO Spending Authority
Amendment	Municipal Resource Group	Organizational Team Training Services	NTE - \$60,250	1/1/2026-12/31/2026	CEO Spending Authority
Amendment	Richard Heath and Associates	Technical Electrification Advising Services	No new NTE	Extends term to 12/31/2026	CEO Spending Authority
Agreement	Orion Security	Security Patrol - New Headquarters	NTE - \$9,888	1/1/2026 - 12/31/2026	CEO Spending Authority
Amendment	Rueben Veek	Technical Electrification Advising Services	No Change	Extends term to 12/31/2026	CEO Spending Authority
Amendment	Sorren CPAS PC	Financial Audit Services	No Change	No Change	Board Approved (11/12/2025)
Agreement	Dinsmore Landscape Company	Landscape Services - New Headquarters	NTE - \$7,200	1/1/2026 - 12/31/2026	CEO Spending Authority
Agreement	Accel Air Systems	HVAC Maintenance - New Headquarters	NTE - \$1,179.36	1/1/2026 - 12/31/2026	CEO Spending Authority
Agreement	Crane Pest Control	Pest Control Services - New Headquarters	NTE - \$2,340	1/1/2026 - 12/31/2026	CEO Spending Authority
Agreement	City of Cupertino	Member Agency Grant Program	NTE - \$225,230	12/17/2025 - 12/31/2028	Board Approved (3/2025)



Exhibit 2 - CEO Power Supply Agreements Executed Under Delegated Authority

Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value
Pacific Gas and Electric Company	12/18/2025	Purchase	Carbon Free Energy (Allocation)	1/1/2026	12/31/2026	\$0.00

CEO Report Clean Power Update

SVCE Board Meeting
January 14, 2026



California's Clean Energy Goals

SVCE's procurement targets are primarily driven by regulatory requirements and Board goals

SB100

- 60% Renewable Energy by 2030
- 100% Carbon Free by 2045

SB350

- 65% of Renewable Energy must be from Long-Term (10yr or more) contracts

MTR

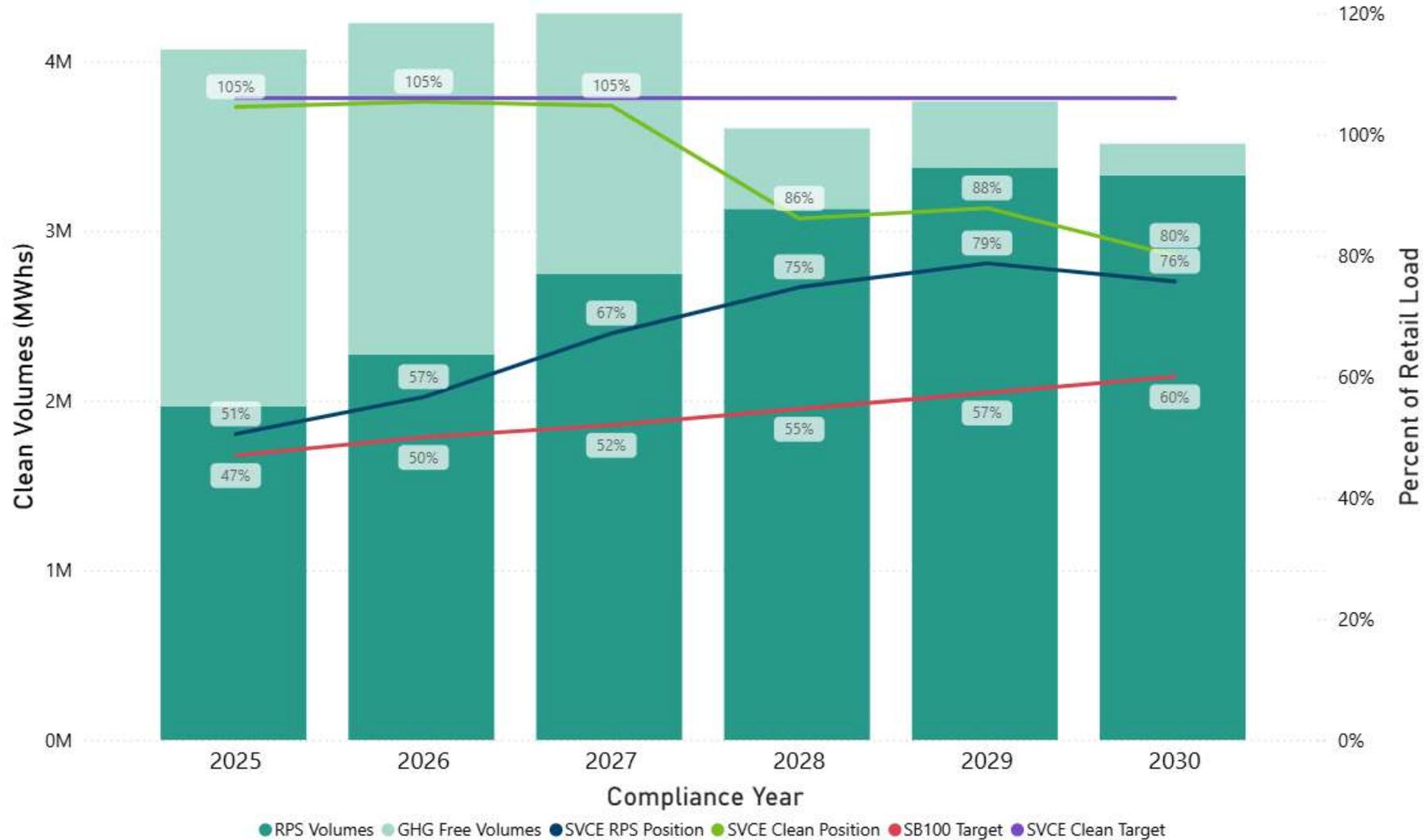
- Mid-Term Reliability
- Established by the CPUC to focus on securing sufficient online resources to meet expected demand in the coming few years

SVCE BOD

- 100% Clean – annually, with line losses
- 75% Renewable by 2030
- 100% Renewable by 2035 (adopted late 2024)



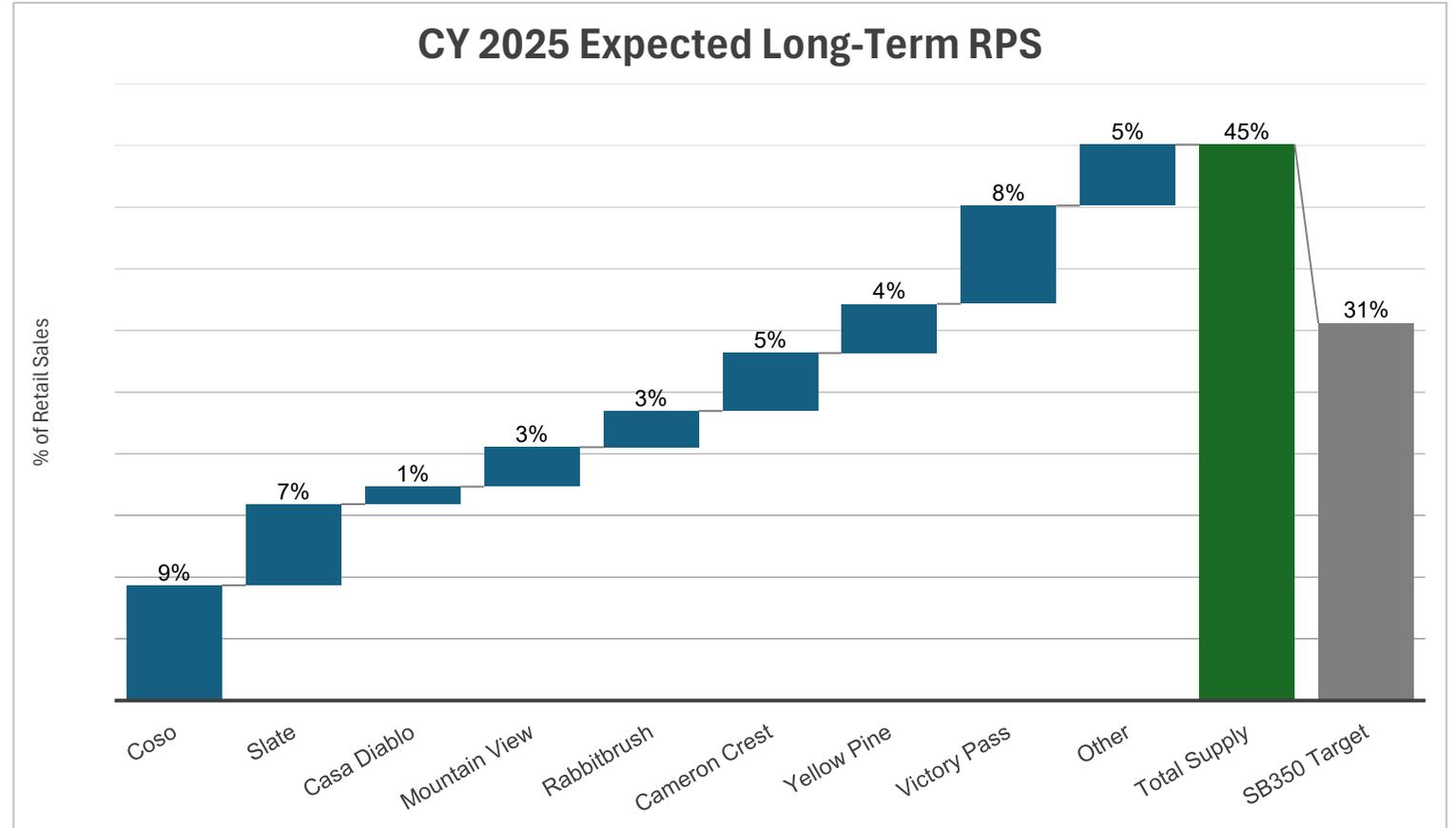
SVCE is On Track to Meet SB100 and Agency Goals for Clean and RPS...





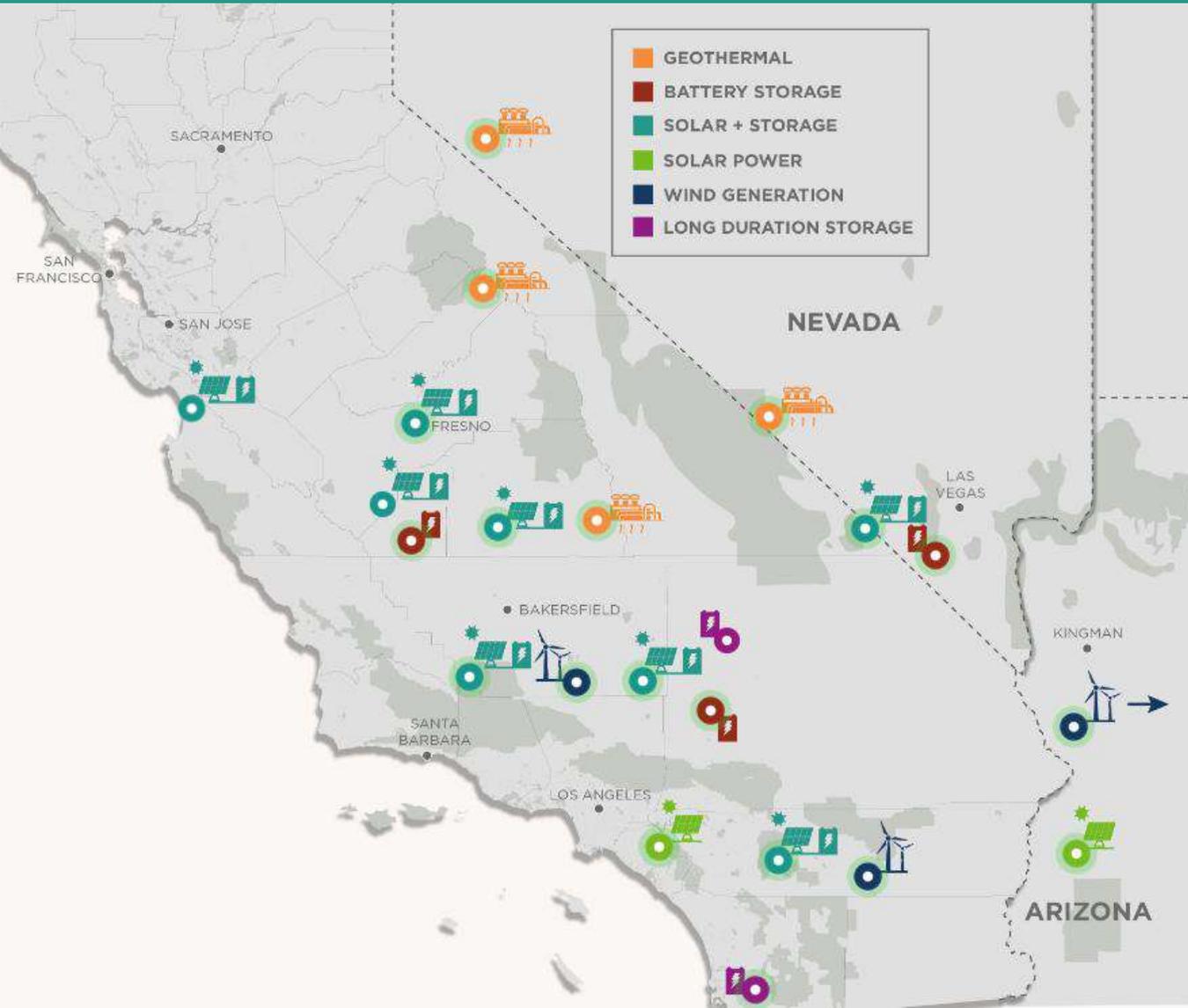
And Making Significant Progress Toward Meeting Long-Term RPS Targets

SB350 is a multi-year compliance period obligation, which has interim annual targets



- **Currently in Compliance Period 5: 2025-2027**

Long-Term Power Purchase Agreements



- \$4.1B+ in commitments
 - 26 PPAs signed
 - 23 new build projects
 - 1,000+ MW of Renewable Power
 - 2,000+ MWh of Battery Storage
- 10 Projects now delivering to SVCE:
- COSO geothermal - January 2022
 - Slate Solar + Storage – January 2022
 - Casa Diablo geothermal – July 2022
 - Mountain View wind – July 2022
 - Rabbitbrush Solar + Storage – October 2022
 - Terra-Gen Wind – January 2023
 - Yellow Pine Solar + Storage – July 2023
 - Victory Pass Solar + Storage – March 2024
 - Baldy Mesa Storage (RA-only) – June 2024
 - Hanford BESS – August 2025



Long-Term Contracts: Online

	Seller	Project Name	Technology	Generation MW	Storage MW	Storage MWh	Term (years)	SVCE Board Approval
1	MN8	Slate	Solar + Storage	93	46.5	186	17	Oct-18
2	Ormat	Casa Diablo	Geothermal	7			10	Feb-20
3	Atlantica	Coso	Geothermal	43.8			15	Mar-20
4	Leeward	Rabbitbrush	Solar + Storage	40	8	20	15	Apr-20
5	NextEra	Yellow Pine	Solar + Storage	50	26	104	20	May-20
6	AES	Mountain View	Wind	33.3			20	Apr-21
7	Clearway	Victory Pass	Solar + Storage	100	25	100	15	May-21
8	Terra-Gen	Cameron Crest	Wind	77.7			15	May-21
9	AES	Baldy Mesa (RA-only)	Storage	0	75	300	10	Sep-22
10	Middle River Power	Hanford	Thermal + BESS	99.4	131.4	131.4	12	Apr-23



Casa Diablo Geothermal



Victory Pass Solar + Storage

Long-Term Contracts: In Development

	Seller	Project Name	Technology	Generation MW	Storage MW	Storage MWh	Term (years)	SVCE Board Approval	Status
1	Avantus	Aratina	Solar + Storage	80	50	200	20	Jun-20	Construction
2	SB Energy	Angela	Solar + Storage	20	10	40	15	Mar-21	Construction
3	Origis	San Luis West	Solar + Storage	62.5	15.625	62.5	15	Apr-21	Pre-construction
4	Rev Renewables	Tumbleed	Long Duration Storage	0	15.9375	127.5	15	Feb-22	Construction
5	Ormat	Geothermal Portfolio	Geothermal	16.75			20	Jun-22	Pre-construction
6	OME	Fish Lake	Geothermal	1.82			20	Jun-22	Pre-construction
8	NextEra	Grace	Solar	120			15	Aug-23	Pre-construction
9	NextEra	Yellow Pine III	Storage	0	24	96	15	Aug-23	Pre-construction
10	NextEra	Yellow Pine III	Long Duration Storage	0	9	72	15	Apr-25	Pre-construction
11	Pattern	SunZia South	Wind	70.2			15	Nov-23	Construction
12	Pattern	SunZia North	Wind	29.8			15	Nov-23	Construction
13	VCI Energy	Garden Green Solar	Solar + Storage	50	50	200	10	Oct-24	Pre-construction
14	Pattern	SunZia South Incremental	Wind	17.54			10	May-25	Construction
15	Pattern	SunZia North Incremental	Wind	7.46			10	May-25	Construction
16	Intersect Power	Darden III	Solar + Storage	91.48	91.48	365.92	10	Sep-25	Pre-construction



SunZia Wind & Transmission



Clean Energy Resources Online Progress as of December 24, 2025

2025

- San Luis West Solar + Storage: *Pre-construction - delayed*

2026

- Angela Solar + Storage: *Construction mode*
- Tumbleweed LDS: *Construction mode*
- Aratina Solar + Storage: *Construction mode*
- SunZia N/S Wind and Incremental N/S Wind: *Construction mode*

2027

- Fish Lake Geothermal: *Pre-construction*
- Grace Solar: *Pre-construction*
- Ormat Geothermal Portfolio: *Pre-construction*

2028+

- Yellow Pine III Storage: *Pre-construction*
- Yellow Pine III LDS: *Pre-construction*
- Darden: *Pre-construction*
- Garden Green Solar: *Pre-construction*

THANK YOU!



SVCE Legislative and Regulatory Update

January 14, 2026



Policy Updates

Regulatory Update:

1. Provider of Last Resort
2. Power Charge Indifference Adjustment

Legislative Update:

1. State Legislation
2. 2026 Legislative Calendar



Regulatory Update



Key Regulatory Activities

Activity	Purpose	Status
R.21-03-011 Provider of Last Resort	Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	On December 12, 2025, the CPUC issued a Phase 2 Proposed Decision, adopting guidelines for any future application of a non-IOU entity seeking POLR status. Because no non-IOU has indicated interest in become POLR, the PD will close the proceeding, but should a non-IOU want to apply to become POLR in the future, the PD provides guidelines for that application.
R.25-02-005 Power Charge Indifference Adjustment	Order Instituting Rulemaking to Update and Reform Energy Resource Recovery Account and Power Charge Indifference Adjustment Policies and Processes	On December 1, 2025, CalCCA filed a Petition for Writ of Review with the California Court of Appeal, Third District, challenging the CPUC's Phase 1 decision that retroactively changed the methodology used to calculate the Power Charge Indifference Adjustment (PCIA).



Legislative Update



Key 2026 State Legislative Milestones

- January 5 – Legislature Reconvenes
- January 31 – Last day for each house to pass bills introduced in that house in 2025
- February 20 – Last day for bills to be introduced
- April 24 – Last day for policy committees to hear fiscal bills
- May 15 – Last day for fiscal committees to hear bills introduced in that house
- May 29 – Last day for each house to pass bills introduced in that house
- June 15 – Budget bill must pass by midnight
- July 2 – Last day for policy committees to vote on bills
- August 14 – Last day for fiscal committees to vote on bills
- August 31 – Last day for each house to pass bills
- September 30 – Last day for Governor to sign bills
- November 3 – Statewide General Election



Staff Report – Item 3

Item 3: Elect SVCE Board Officers for 2026

From: Larry Klein, Vice Chair

Prepared by: Andrea Pizano, Sr. Executive Assistant and Board Clerk

Date: 1/14/2026

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy (SVCE) Board of Directors (Board) elect SVCE Board Officers (Board Chair, Board Vice Chair, and Executive Committee) to serve for 2026. The Nominating Committee recommends the following slate of Board Officers, which includes Board Chair, Vice Chair and the Executive Committee for 2026:

Board Chair and Board Vice Chair

- Current Vice Chair Larry Klein to serve as Chair of the Board; and
- Director Sally Meadows to serve as Vice Chair of the Board

Executive Committee Members

- Elliot Scozzola, Campbell
- Sally Meadows, Los Altos
- George Tyson, Los Altos Hills
- Yvonne Martinez Beltran, Morgan Hill
- Pat Showalter, Mountain View
- Larry Klein, Sunnyvale

BACKGROUND

Section 4.11.1 of the [SVCEA Joint Powers Agreement](#) (Agreement) specifies that the Directors shall select, from among themselves, a Chair who shall be the presiding officer of all board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The Agreement also specifies that the term of office continues for one year and there is no limit on the number of terms held by either position. The duties of the Executive Committee will continue to be to review and provide advice to the Chief Executive Officer and the entire Board on policy, operational and organizational matters and perform such other responsibilities, tasks or activities as delegated to it by the Board; this term is also for one year.

With amendments to SVCE's Operating Rules and Regulations in October 2025, changes were made to the selection process to include an Ad-hoc Nominating Committee, selected by the Vice Chair, to recommend appointments for the Board Chair, Vice Chair, and Executive Committee. Additional changes to the Operating Rules and Regulations also included an automatic seat for the newly appointed Chair and Vice Chair to the Executive Committee. The Nominating Committee is comprised of Vice Chair Larry Klein, Director Elliott Scozzola, and Director Pat Showalter.

The process and timeline for the selection of the Chair, Vice Chair and the Executive Committee included the following:

Agenda Item: 3**Agenda Date: 1/14/2026**

November 14, 2025: Board Clerk sent request for interest for the Board Chair, Vice Chair roles and Executive Committee for 2026

December 12, 2025: Interest for Board Chair, Vice Chair and Executive Committee membership responses due to Board Clerk

January 14, 2026: Board Chair, Vice Chair, and Executive Committee selections to be made at the Board of Directors meeting

ANALYSIS & DISCUSSION

The Directors listed below expressed interest in serving as Board Chair, Board Vice Chair, and/or on the Executive Committee:

Chair

Larry Klein, Sunnyvale

Vice Chair

Sally Meadows, Los Altos

Yvonne Martinez Beltran, Morgan Hill

Executive Committee

Elliot Scozzola, Campbell

Sally Meadows, Los Altos

George Tyson, Los Altos Hills

Yvonne Martinez Beltran, Morgan Hill

Pat Showalter, Mountain View

Larry Klein, Sunnyvale

Their respective letters of interest are attached to the report.

The Nominating Committee met and has put forth a recommendation for Director Larry Klein to serve as Chair and Director Sally Meadows to serve as Vice Chair, and the Executive Committee to be made up of Directors Elliot Scozzola, Sally Meadows, George Tyson, Yvonne Martinez Beltran, Pat Showalter, and Larry Klein.

STRATEGIC PLAN

The recommendation supports SVCE's overall strategic plan.

ALTERNATIVE

N/A

FISCAL IMPACT

There is no fiscal impact to the agency as a result of selecting Board Officers.

ATTACHMENTS

1. Statement of Interest: Director Larry Klein (Chair and Executive Committee)
2. Statement of Interest: Director Sally Meadows (Vice Chair and Executive Committee)
3. Statement of Interest: Director Yvonne Martinez Beltran (Vice Chair and Executive Committee)
4. Interest Received for 2026 Executive Committee Membership
 - a. Elliot Scozzola, Campbell
 - b. George Tyson, Los Altos Hills
 - c. Pat Showalter, Mountain View

Andrea Pizano

From: Larry Klein
Sent: Friday, December 12, 2025 3:54 PM
To: Andrea Pizano
Cc: Monica Padilla
Subject: Re: Reminder: SVCE – 2026 Chair/Vice Chair and Executive Committee Appointments Info (Interest Request Due 12/12)

ATTENTION: This message is from an external user. Confidential information such as social security, credit card bank routing, wire transfer and other personally identifiable information should not be transmitted to this user. For questions, please contact the SVCE IT Department.

Hi Andrea,

Here is my letter of interest for Chair/Executive Committee:

Regards,

-Larry

=====
Dear SVCE Colleagues,

I am writing to formally submit my letter of interest for the position of **Silicon Valley Clean Energy (SVCE) Chair for 2026** and for the **SVCE Executive Committee**.

For the past year, I have served as Vice Chair for Chair Tyson, working to supplement his efforts and supporting him in his role wherever needed. I have proudly represented the organization at multiple regional events (like the CalCCA conference, as well as multiple site visits for locations we are investing our money to create new clean energy and storage, or decarbonizing communities).

I have a been on the Executive Committee for multiple years now, and I have a strong understanding of the organization and good knowledge of the issues we face. I think that I am in the best position to lead the organization through the coming year, especially as we look closely at rates and the long term path for fiscal stability.

I have worked closely with our CEO, Monica Padilla, to brainstorm on solutions and strategies, and as Mayor of Sunnyvale (the largest city in our service area) I think I have a good knowledge of the mixed needs of our diverse customer base. Sunnyvale has a good reputation for fiscal responsibility and long term planning, and I hope to utilize that in my capacity as chair.

Thank you for your time and consideration. I look forward to the opportunity to serving our organization in 2026.

Sincerely,

Larry Klein
Mayor of Sunnyvale

Andrea Pizano

From: Sally Meadows
Sent: Sunday, December 14, 2025 5:40 PM
To: Andrea Pizano
Cc: Monica Padilla
Subject: Re: Reminder: SVCE – 2026 Chair/Vice Chair and Executive Committee Appointments Info (Interest Request Due 12/12)

ATTENTION: This message is from an external user. Confidential information such as social security, credit card bank routing, wire transfer and other personally identifiable information should not be transmitted to this user. For questions, please contact the SVCE IT Department.

Hi Andrea,
This is the text of the screenshot I sent you on Friday, in case having the text is helpful in compiling the information. Thank you!

Sally

I am following up regarding my interest in serving as the 2026 Board Vice Chair, and also in continuing on the Executive Committee.

For three years, I have been the primary Los Altos representative on the SVCE Board (and was alternate the prior two years). My committee assignments have included one year on the Finance and Administration Committee and two years on the Executive Committee. Additionally, I have been on the Risk Oversight Committee for three years [please feel free to omit this if it's preferred not to mention ROC.]

I have a strategic, forward-looking perspective, ask good questions and lead efficient and respectful meetings. It would be an honor to continue to contribute to SVCE and our community in pursuit of clean, affordable and reliable energy.

Best regards,
Sally

Sally Meadows | Councilmember, City of Los Altos

Los Altos City Hall
1 North San Antonio Road | Los Altos, CA 94022
Main: (650) 947-2700 | Direct: (650) 947-2766 | smeadows@losaltosca.gov

Dear SVCE Colleagues,

I am writing to express my interest in serving as SVCE Vice Chair and on the Executive Committee again this year.

I have served as Morgan Hill's SVCE Representative for eight years, fostering a respect for SVCE and its mission. I sought this committee assignment, to help lead clean energy efforts.

Commitment and Proven Leadership

My dedication to SVCE is clear: I have run for the Vice Chair position twice before, even tying for the role, demonstrating my unwavering, long-term commitment to leading this organization. My service has been deliberate and comprehensive, preparing me fully for the Vice Chair role:

- **Executive Committee Experience:** I have served the last two years on the Executive Committee, including the privilege of acting as *Executive Chair this year*. This experience has deepened my understanding of SVCE's critical work, strategic priorities, and inner workings, providing direct exposure to staff and key operational topics.
- **Comprehensive Committee Service:** To gain a multi-faceted view of the organization, I have intentionally served on the *Executive Committee, Audit Committee, the Legislative Committee*, and as *Executive Committee Chair and Legislative Committee Chair*.
- **Regional and State Advocacy:** As Legislative Chair, I advocated effectively in Sacramento, strengthening relationships with climate leaders. I continue to champion and defend our policies regionally and statewide through my various Board activity.
- **Local Engagement:** I have *championed the Climate Action Plan in my City*, working directly with climate-action-minded youth and encouraging their involvement. My efforts have focused on helping SVCE become a recognized name in our neighborhoods.
- **Broader Integration:** Drawing on my background as an Urban Planner (Housing and Economic Development), I connect SVCE's mission with crucial regional efforts, including ABAG and the VTA PAC Board. I have leveraged my Cal Cities Board position to strengthen SVCE within the Peninsula Division, significantly increasing our reach.

A Confident Vision for Collaborative Policy Solutions

My demonstrated commitment, success in building regional relationships, and breadth of multi-disciplinary experience make me the ideal candidate for Vice Chair. I am excited for the opportunity to lead this organization and further the excellent work of our staff and colleagues.

As Vice Chair, I will foster our collective success by ensuring we arrive at the best policy solutions by considering all City perspectives and stakeholder ideas. I am committed to leading with SVCE at the forefront and supporting dedicated members interested in leadership.

Thank you for your consideration. I look forward to the opportunity to serve as your Vice Chair.

Sincerely,

Yvonne Martínez Beltrán

Andrea Pizano

From: Elliot Scozzola
Sent: Wednesday, December 10, 2025 10:58 PM
To: Andrea Pizano
Subject: Interest in continuing to serve

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Hi Andrea!

I just wanted to show my interest in continuing to serve on both the Finance and Executive Committee.

Best regards,

Elliot



Elliot Scozzola
Councilmember, City of Campbell
City of Campbell
70 N. First Street | Campbell, CA 95008
www.campbellca.gov
elliots@campbellca.gov

Andrea Pizano

From: George Tyson
Sent: Friday, December 12, 2025 2:01 PM
To: Andrea Pizano
Cc: Monica Padilla; Larry Klein
Subject: Re: Reminder: SVCE – 2026 Chair/Vice Chair and Executive Committee Appointments Info (Interest Request Due 12/12)

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I would like to be considered for the Executive Committee next year. As upcoming immediate past chair, I would welcome the opportunity to help provide continuity in leadership to the organization in the coming year.

George
Sent from my iPhone

On Dec 11, 2025, at 2:13 PM, Andrea Pizano <Andrea.Pizano@svcleanenergy.org> wrote:

Hello SVCE Directors,

Sending a friendly reminder as a follow-up to Vice Chair Klein’s announcement yesterday evening to please send your interest in serving as Chair, Vice Chair and/or on our Executive Committee to me by this Friday, December 12, 2025, close of business. I will then pass the information on to the Nominating Committee.

Please reach out with any questions.

Best,

Andrea

Andrea Pizano
Board Clerk/Executive Assistant
(408)721-5301 x1005

Andrea Pizano

From: Showalter, Pat
Sent: Friday, December 12, 2025 8:06 AM
To: Andrea Pizano
Subject: Pat Showalter's request to be considered for the Executive Committee

ATTENTION: This message is from an external user. Confidential information such as social security, credit card bank routing, wire transfer and other personally identifiable information should not be transmitted to this user. For questions, please contact the SVCE IT Department.

Hi Andrea,
Thanks for the reminder and resending the instructions. Please consider the paragraphs below as my Request:

I would like to serve on the Silicon Valley Clean Energy's Executive Committee next year. My background on SVCE includes serving as Mountain View's representative on the SVCE Board for 2 years and as our Alternate for 1 year. During that time, I have been an active member of the Finance & Administration Committee. I also served on the Legislative Committee this year and a Sub-committee on Governance. My board & committee service has given me a good foundation in SVCE including our goals, finances and operations. I would like to use that knowledge on the Executive Board.

On Mountain View's City Council, I am known as a champion for the environment and housing. I focus on climate-change related issues and increasing housing supply. I served from 2015-18 was re-elected in 2020 and 2024. I served as Mayor in 2016 and 2024. I also serve on the San Francisco Bay Conservation & Development Commission, the Bay Area Water Supply Conservation & Development Agency and on the National League of Cities' Energy, Environment & Natural Resources Committee.

I am a licensed civil engineer who worked in Water Resources Management for over 30 years. Much of my career was devoted to multi-agency projects such as the South Bay Salt Pond Restoration Project. I earned a Master's in Civil Engineering from U.C. Berkeley and a Bachelor's in Geology & History from Mount Holyoke College.

I believe my collective experience would be valuable on SVCE's Executive Committee.



Pat Showalter, PE
Councilmember
[AskMV](#) | [MountainView.gov](#)



Staff Report – Item 4

Item 4: Authorize the Chief Executive Officer to Finalize Negotiations and Execute Necessary Agreements for Willow Rock Long Duration Energy Storage with California Community Power, Participating Community Choice Aggregators and Hydrostor’s GEM A-CAES LLC

From: Monica Padilla, CEO

Prepared by: Zak Liske, Deputy Director of Power Resources

Date: 01/14/2026

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy (SVCE) Board of Directors (“Board”) delegate authority to the Chief Executive Officer (CEO) to finalize negotiations and execute on behalf of SVCE as a member of California Community Power (CC Power) the following agreements and any necessary ancillary documents for the Willow Rock Compressed Air Energy Storage Facility for Long Duration Storage (LDS) and within the parameters specified below:

1. Project Participation Share Agreement (PPSA) between Silicon Valley Clean Energy Authority, California Community Power and participating community choice aggregators (CCAs) – Attachment 1
2. Resource Adequacy and Top-Bottom Four Agreement (RA and TB4 Agreement) – Buyer Liability Pass Through Agreement (BLPTA) between Silicon Valley Clean Energy Authority, California Community Power and GEM A-CAES LLC – Attachment 2

Parameters:

- SVCE’s expected share of project 5.7 MW with a maximum incremental step-up quantity of 1.425 MW for a maximum of 7.125 MW;
- Delivery term of 20 years starting at the Commercial Operation Date on or about December 31, 2030 through December 30, 2050; and
- Total lifetime amount not to exceed \$37.62 million

Execution of the two agreements above will help SVCE meet Resource Adequacy (RA) requirements, including Mid-Term Reliability (MTR) requirements for new clean capacity. The agreements are being provided in substantive form. Some additional modifications may be necessary but will not modify the parameters above.

BACKGROUND

Through the 2020 Integrated Resource Planning (IRP) proceeding, the California Public Utilities Commission (CPUC) identified the need for additional storage including longer-duration storage to enable grid integration of a large fleet of intermittent resources to meet California’s greenhouse gas emission reduction goals and to replace several natural gas once-through-cooling (OTC) resources and the Diablo Canyon Nuclear Power Plant (DCNPP) slated to retire between 2023 and 2025.

In 2021 and 2023, as part of the 2020 IRP the CPUC issued through Decisions (D.) 21-06-035 and (D.) 23-02-040—together, the Mid-term Reliability (MTR) Procurement Orders (MTR Orders)—requiring CPUC-jurisdictional load serving entities (LSEs), such as SVCE, to procure and/or develop a collective 15,500 MW of new capacity by 2031. SVCE’s total share of the MTR Order and Supplemental MTR Order is 317 MW, which was determined

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based on SVCE's load ratio share of the CPUC's jurisdictional load in the Pacific Gas and Electric transmission access area. Included within the MTR Orders is an identified need of 1,000 MW of LDS. SVCE's obligation is approximately 20.5 MW for LDS resources. SVCE's procurement efforts to date are expected to fulfill the obligation for LDS resources, however an open position still exists for generic MTR capacity.

In February 2021, CC Power was formed by ten CCAs, including SVCE, to share resources and risk related to the procurement of difficult to acquire resources. As of 2026, CC Power has nine member CCAs. Some of CC Power's primary responsibilities include procuring resources to meet the MTR Orders. These procurement efforts include solicitations, shortlisting of projects and coordination of negotiations and development of necessary agreements.

CC Power ran a competitive solicitation process through its 2024 RFP. Through this process, projects were evaluated, ranked and selected for shortlisting with the objective of meeting the RFP's cost effectiveness goals, criteria and requirements under the MTR Orders and CC Power's enhanced contract conditions for labor, environment and environmental justice. Several LDS projects were offered in the solicitation, including Hydrostor's Willow Rock. In addition to SVCE, five CCAs have agreed to participate in the Willow Rock LDS Project including:

1. Clean Power San Francisco (CPSF)
2. Peninsula Clean Energy (PCE)
3. Redwood Coast Energy Authority (RCEA)
4. San Jose Clean Energy (SJCE)
5. Sonoma Clean Power Authority (SCPA)
6. Valley Clean Energy (VCE)

In the aggregate the long duration storage mandate for the participating members, measured in Net Qualifying Capacity (NQC), is 96.5 MW. Table 1 is a summary of the MTR Order and PPSA entitlement share for each of the participating CCAs.

Table 1: MTR Order Net Qualifying Capacity (NQC) and Willow Rock Entitlement Share

CCA	CPUC Capacity Obligation MW NQC	PPSA Entitlement Share	Willow Rock Allocation (MW)	Willow Rock Allocation NQC
CPSF	15.5	23%	11.5	10.36
PCE	19	30%	15	13.52
RCEA	3.5	6.2%	3.1	2.79
SJCE	21.5	24%	12	10.81
SVCE	20.5	11.4%	5.7	5.14
VCE	4	5.4%	2.7	2.43
Total	84		50	45.05

Willow Rock meets the conditions established in the MTR Orders for LDS resources including the minimum eight-hour discharge duration, ten-year contract term, pre-2031 start date and ability to meet resource adequacy requirements.

SVCE's CEO is a voting member of the CC Power Board. The CC Power Board is expected to vote on authorizing its General Manager to execute the RA and TB4 Agreement with GEM A-CAES LLC at its January 28, 2026 meeting. The CCAs have 120 days from the effective date to get approval of the necessary agreements. Failure to gain approval may result in the termination of the Willow Rock RA and TB4 Agreement. SVCE Staff find it prudent to bring this set of contracts to the SVCE Board for approval before SVCE's CEO votes at CC Power's Board meeting.

ANALYSIS & DISCUSSION

The Willow Rock project is a 50 MW/400 MWh compressed air energy storage (CAES) facility located in Rosamond, Kern County, CA. The 50 MW project is part of a larger 500 MW installation. The anticipated commercial operation date of the project is December 2030. SVCE's expected share of the agreement is 11.4% or 5.7 MW/45.6 MWh.

Overview of Project

Project Name	Willow Rock, GEM A-CAES LLC
Technology	Compressed air energy storage – 8-hour discharge duration
Storage Capacity	50 MW / 400 MWh
Commercial Operation Date & Term	12/31/2030, 20 years
Developer	Hydrostor
Location	Rosamond, Kern County, CA

The project has an executed interconnection agreement with the California Independent System Operator (CAISO) for Full Capacity Deliverability Status (FCDS) for the energy storage component, meaning it will provide resource adequacy attributes in addition to energy arbitrage benefits. The project will interconnect to Southern California Edison's Whirlwind substation.

Under the contract, CC Power will pay for the use of the storage project at a fixed-price rate per kW-month, with no escalation, for the full term of the contract (20 years). CC Power is entitled to Resource Adequacy benefits and energy arbitrage value realized through a financial top-bottom settlement. The top-bottom structure allows the off-taker/buyer, in this case CC Power, a financial revenue payment based on a daily calculation of the difference in price between the average of the most economic hours to charge and discharge the facility accounting for round trip efficiency. Through the PPSA, SVCE will pay for its entitlement share of the project and also receive its share of the attributes and benefits of the LDS project.

Developer

The project is being developed by Hydrostor Inc., which is a Canada-based developer and technology provider for utility-scale energy storage facilities, including its proprietary and globally leading long duration energy storage solution using Advanced Compressed Air Energy Storage (A-CAES). Hydrostor started in 2010 and is headquartered in Toronto, Ontario, Canada.

Technology – Advanced Compressed Air Energy Storage

To charge the A-CAES system, off-peak or surplus electricity is used to power a motor-driven air compressor, which compresses ambient atmospheric air. The heat generated during compression of the air is captured by a set of heat exchangers and stored separately in a thermal fluid for later use. The air is compressed to match the storage pressure of a constructed underground storage cavern, where it can be stored until electricity is required.

The storage cavern is flooded through a hydrostatic connection to a surface reservoir of water. The storage pressure of the cavern is therefore equal to the hydrostatic pressure at the cavern depth. As air is charged into the storage cavern, water is displaced up the access shaft and into the surface reservoir, storing substantial potential energy in the large elevation difference. With hydrostatic compensation, the air pressure within the cavern is maintained at a near constant level during the entire operating cycle. This is beneficial for the efficient performance of the air handling equipment, and reduces the required underground cavern volume.

When energy is required, the compressed air is released from the storage cavern and allowed to flow back to the surface under the pressure of the hydrostatic compensation reservoir. The stored heat which was generated during system charging is reinjected to the compressed air and is used to drive a turbine, generating electricity and supplying it back to the grid.

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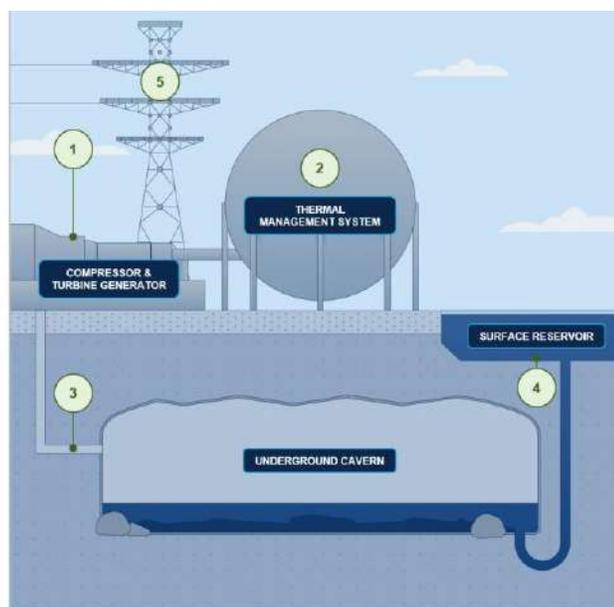
Because of the use of hydrostatic compensation, all the stored air is fully recoverable; this is unlike traditional CAES which requires a substantial portion of the air to maintain a minimum storage pressure for either cavern protection or turbine operation. This drastically reduces storage volume requirements for A-CAES.

An animation illustrating how Hydrostor's A-CAES system works can be found below and at <https://www.hydrostor.ca/>.

The Closed Loop A-CAES Process

- 1 **COMPRESSION**
Energy powers an air compressor, generating heat in the process.
- 2 **HEAT EXCHANGE**
Heat is extracted from the compression process and captured by a thermal management system for reuse.
Hydrostor IP: Adiabatic heat storage improves efficiency and makes the process emissions free.
- 3 **AIR STORAGE**
Compressed air is pumped underground and stored in a purpose-built, water-filled cavern.
- 4 **WATER DISPLACEMENT**
Compressed air displaces water, forcing it up the shaft to the surface reservoir.
Hydrostor IP: Hydrostatic compensation maintains cavern pressure, improves efficiency, and enables siting flexibility, which minimizes cavern cost and size requirement.
- 5 **DISCHARGE**
When energy is needed, the water is allowed to flow back down the shaft into the underground cavern, pushing the compressed air back to the surface facility. The compressed air is then reheated from heat stored earlier in the process and expanded through the turbines to generate electricity.

*Patented, proprietary technology



Contract Structure

This project consists of three basic agreements to which CC Power is a party and a guarantee agreement to which the participating member and the developer are parties. The LDS contract structure allocates rights and obligations, project benefits, and cost and allocation of risks and liabilities as described below:

Resource Adequacy and TB4 Agreement - The agreement is between CC Power and an LDS developer and addresses issues such as (1) project requirements and milestones, (2) price, (3) quantity, (4) term, (5) payment obligations, and other key terms.

Buyer Liability Pass Through Agreements - The Intent of the BLPTA is to mirror the liability a participating CCA would have if executing the RA and TB4 Agreement directly with an LDS developer. Through the BLPTAs, each CCA guarantees CC Power's payment obligations in proportion to each participating CCAs' share of the project. In exchange, the LDS developer agrees to release CC Power from liability and to limit recovery from each CCA to an amount proportionate to each CCA's share of the project.

Project Participation Share Agreement - Under the PPSA, participating CCAs agree to fund CC Power's payment obligations so that CC Power can make timely payments under the agreement with the developer. The PPSA also addresses how participating CCAs will (1) share revenue from the TB4 financial settlement resulting from the LDS facility participating in the CAISO market, (2) direct CC Power's actions under the RA and TB4 Agreement, and (3) step in, with a cap, to cover any member default in order to avoid a CC Power default under the ESSA.

Consistent with the CC Power Board direction for enhanced contracting conditions, the project will be constructed under a project labor agreement, thus assuring payment of prevailing wages and use of apprenticeship programs. The project will also adhere to CC Power environmental and environmental justice conditions.

PPSA Allocation

SVCE is seeking a minimum approval authority to cover its entitlement share plus a contingency. The contingency is intended to cover a step-up provision included in the PPSA, where if a CCA defaults after the PPSA is executed, the remaining CCAs will need to step up to take additional allocation. The step-up provision is capped at 125% of the PPSA entitlement share.

SVCE’s expected entitlement share is 11.4% or 5.7 MW, however SVCE is seeking authority to receive an allocation of up to 7.125 MW to cover the contingency.

Mid-term Reliability Procurement Order & Resource Adequacy Capacity

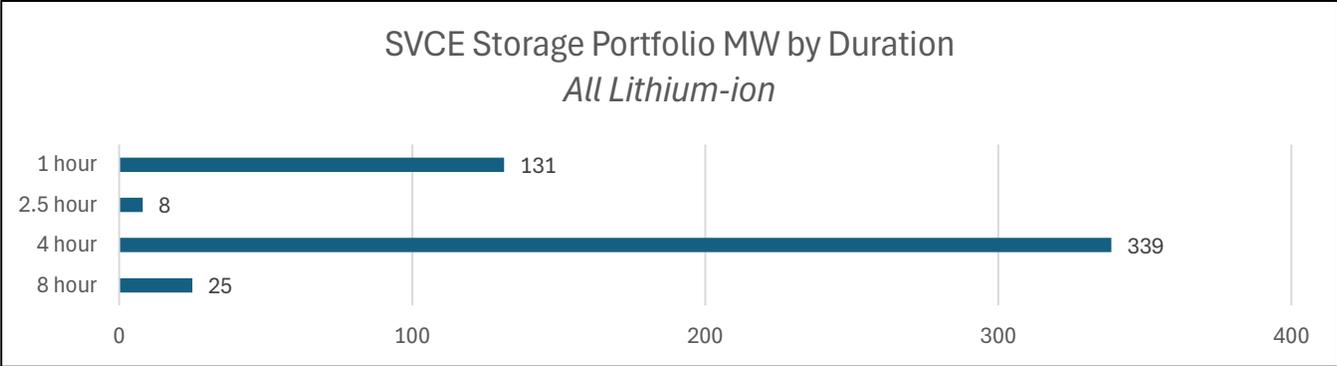
SVCE has made significant progress towards meeting its allocation in all tranches of procurement mandates per the MTR Orders. SVCE is slightly deficient in meeting its cumulative generic requirements, which orders the procurement of new clean energy capacity including standalone storage. While SVCE expects to meet its LDS requirements without Willow Rock, the 5.14 MW of NQC are eligible to cover SVCE’s existing MTR open position for generic capacity.

SVCE has an obligation to procure sufficient capacity to meet grid reliability as prescribed by the CPUC’s RA Program. The Willow Rock project is expected to provide RA capacity.

Technology Diversification

SVCE’s existing storage portfolio is over 500 MW of lithium-ion storage in various hour durations. The opportunity to contract for a relatively small slice of the Willow Rock project provides an initial investment into portfolio diversity with limited downside risk for a technology that is still attempting to scale. While lithium-ion has proven to be the most widely adopted and operational storage technology, investing in alternatives is a prudent practice.

Chart 1: SVCE Storage Portfolio



PPA Project Selection Policy

On April 9, 2025, the Board adopted the PPA Project Selection Policy (Policy) which set evaluation criteria for new PPAs, including those which SVCE participates in through CC Power. The Willow Rock agreement was shortlisted prior to the Board-adopted policy; however, the Agreement meets many of the Policy requirements including location in California, tech diversification, payment of prevailing wages, environmental stewardship and community engagement.

Project Development Status

Willow Rock is a new-build project in its early stage. The project is expected to receive permits from the California Energy Commission (CEC) in the coming months.

Impact of Federal Regulatory Uncertainty

The project is partially financed by a loan from the Department of Energy. If this funding source were to be threatened it would lead to project viability concerns.

ALTERNATIVE

SVCE can decide to not procure alternative storage technology through CC Power. This alternative is not recommended as compressed air energy storage resources are not considered cost-effective at this time and the developer is likely unwilling to contract for 5.7 MW with a single offtaker. Procuring on its own may require SVCE to over-procure while participating through CC Power will allow SVCE to minimize the amount of capacity procured.

Additionally, SVCE can choose not to abide by the MTR Orders. Doing so would expose SVCE's ratepayers to significant cost in the form of "back-stop" procurement undertaken by Pacific Gas & Electric and imposed on SVCE's customers in addition to CPUC penalties imposed on SVCE.

Staff does not recommend either of these alternatives, as MTR-eligible and alternative storage resources are scarce.

STRATEGIC PLAN

Execution of the Willow Rock project agreements supports the goals of the Board adopted Strategic Plan including:

Strategic Focus Area 2: Expand Clean & Reliable Grid Actions

- Goal 2: Long-term, target for 100% clean energy annually by building a balanced portfolio with consideration for both affordability and reliability while exploring long-term pathways to clean power supply.
- Goal 4: Acquire power supply resources in a cost-effective manner to meet legislative and regulatory obligations, Board directives and customer specific products.
- Goal 5: Manage and optimize load and power resources to meet affordability, GHG reduction and reliability objectives.

FISCAL IMPACT

Ultimate execution of the agreements needed to effect the LDS Project will result in cost to SVCE starting in Fiscal Year 2030-31, which will be included in the budget at that time. Additional costs to administer the monitoring and implementation of the LDS Project agreements through CC Power would be expected to start in FY 2026-27 and will be included in the Operating Budget.

ATTACHMENTS

1. Project Participation Share Agreement
2. Buyer Liability Pass Through Agreement
3. Redacted Resource Adequacy and TB4 Agreement

**WILLOW ROCK ENERGY STORAGE CENTER
PROJECT PARTICIPATION SHARE AGREEMENT**

among

**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS
PUBLIC UTILITIES COMMISSION CLEANPOWERSF**

and

PENINSULA CLEAN ENERGY AUTHORITY

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY AUTHORITY

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

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WILLOW ROCK ENERGY STORAGE CENTER PROJECT PARTICIPATION SHARE AGREEMENT

PREAMBLE

This Project Participation Share Agreement (“**Agreement**”) is entered into as of [**DATE**] (the “**Effective Date**”), by and among the City and County of San Francisco acting by and through its Public Utilities Commission – CleanPowerSF, Peninsula Clean Energy Authority, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipal corporation administering San José Clean Energy, Silicon Valley Clean Energy, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually a “**Project Participant**” and collectively referred to as the “**Project Participants**”) and California Community Power (“**CCP**”), a California joint powers authority. CCP and the Project Participants are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties.**” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS CCP is a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes; and

WHEREAS, the Project Participants have participated with CCP in the negotiation of an agreement for purchase of the certain wholesale energy market products of the Willow Rock Energy Storage Center (the “**Project**” as defined in Exhibit A of the Offtake Agreement), and CCP is to enter into a Resource Adequacy plus TB4 Agreement (“**Offtake Agreement**”), which is incorporated herein by this reference, with GEM A-CAES LLC, a Delaware limited liability company (“**Project Developer**”), providing for purchase of the wholesale energy market products, and associated rights, benefits, and credits from the Project on behalf of the Project Participants; and

WHEREAS, pursuant to this Agreement, CCP shall cause to deliver to each Project Participant the Project Participant’s associated share of the wholesale energy market products and associated rights, benefits, and credits of the Project.

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. **Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (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.

“**Agreement**” has the meaning set forth in the Preamble and any Exhibits, schedules, and any written supplements hereto.

“**Alternate Normal Vote**” has the meaning set forth in Exhibit D, Section 3.5.3.

“**Amended Annual Budget**” means the budget recommended by the CCP Manager and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

“**Annual Budget**” means the budget recommended by the CCP Manager and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement for the operating costs associated with CCP’s administration of this Agreement.

“**Bankrupt**” or “**Bankruptcy**” 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.

“**Billing Statement**” has the meaning set forth in Section 9.2 of this Agreement.

“**Buyer Liability Pass Through Agreement**” or “**BLPTA**” means, for each Project Participant, the form set forth in Exhibit L of the Offtake Agreement, as executed by such Project Participant, countersigned by CCP, and delivered to the Project Developer.

“**Business Day**” 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.

“**CAISO**” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“**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 Damages**” has the meaning set forth in Section 5 of Exhibit B of the Offtake Agreement.

“**CCP Board**” means the Board of Directors of California Community Power.

“**CCP Manager**” means the General Manager of California Community Power or any person who is designated by the CCP Board to act in the capacity of the General Manager.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can 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.

“**Chair**” has the meaning set forth in Exhibit D, Section 3.3.1.

“**Change of Control**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**Charging Energy**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**Commercial Operation Date**” or “**COD**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**Commercial Operation Delay Damages**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**Community Choice Aggregator**” has the meaning set forth in California Public Utilities Code § 331.1.

“**Confidential Information**” has the meaning set forth in Section 18.1 of the Offtake Agreement.

“**Construction Delay Damages**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**Construction Start Date**” has the meaning set forth in Exhibit B of the Offtake Agreement.

“**Contract Price**” has the meaning set forth on the Cover Sheet of the Offtake Agreement.

“**Contract Term**” has the meaning set forth in Section 2.1 of the Offtake Agreement.

“**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.

“**Coordinated Operations Agreement**” means the agreement by and among CCP and all Project Participants for purposes of operating the Project.

“**Costs**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Project Participant in terminating any arrangement pursuant

to which it has hedged its obligations; and all reasonable attorneys' fees and expenses incurred by the Project Participant in connection with the Step-Up Allocation.

"CPUC" means the California Public Utilities Commission, or successor entity.

"Cured Payment Default" means a Payment Default that has been cured in accordance with Section 12.4 of this Agreement.

"Damage Payment" means the amount to be paid by the Offtake Agreement Defaulting Party to the Offtake Agreement Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a) of the Offtake Agreement.

"Defaulting Project Participant" has the meaning set forth in Section 12.1.

"Delivery Point" means the Facility PNode on the CAISO grid.

"Delivery Term" means the period of Contract Years set forth on the Cover Sheet of the Offtake Agreement beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of the Offtake Agreement.

"Designated Fund" has the meaning set forth in Section 10.5.

"Development Security" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet of the Offtake Agreement.

"Discharging Energy" has the meaning set forth in Section 1.1 of the Offtake Agreement.

"Effective Date" has the meaning set forth in the Preamble.

"Energy" means electrical energy, measured in kilowatt-hours or Megawatt-hours or multiple units thereof.

"Energy Settlement Revenues" has the meaning set forth in Section 1.1 of the Offtake Agreement.

"Entitlement Share" means the percentage entitlement of each Project Participant as set forth in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps") attributable to each such Project Participant, as may be amended pursuant to Section 4.2 or 12.8.

"Entitlement Share Reduction Amount" has the meaning set forth in Exhibit C.

"Entitlement Share Reduction Compensation Amount" has the meaning set forth in Exhibit C.

"Entitlement Share Reduction Notice" has the meaning set forth in Exhibit C.

"Estimated Monthly Project Cost" has the meaning set forth in Section 8.1.

"Event of Default" has the meaning set forth in Section 11.1 of the Offtake Agreement.

"Facility" means the energy storage facility described on the Cover Sheet of the Offtake Agreement and in Exhibit A of the Offtake Agreement, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such facility may be expanded or otherwise modified from time to time in accordance with the terms of the Offtake Agreement.

“**Facility Meter**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**Facility Metering Point**” means the location(s) of the Facility Meter shown in Exhibit R of the Offtake Agreement.

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Fiscal Year**” means CCP’s fiscal year as determined by the CCP Board.

“**Force Majeure Event**” has the meaning set forth in Section 10.1 of the Offtake Agreement.

“**Gains**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the Offtake Agreement, determined in a commercially reasonable manner. Factors used in determining the economic benefit to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of such Project Participant, 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., NP-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, except to the extent that the Party is acting solely in its governmental capacity.

“**Guaranteed Commercial Operation Date**” means the date set forth on the Cover Sheet of the Offtake Agreement, as such date may be extended pursuant to Exhibit B of the Offtake Agreement.

“**Guaranteed Construction Start Date**” means the date set forth on the Cover Sheet of the Offtake Agreement, as such date may be extended pursuant to Exhibit B of the Offtake Agreement.

“**Interconnection Agreement**” means the interconnection agreement entered into by Project Developer pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Project Developer’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated, and maintained during the Offtake Agreement Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices, and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” has the meaning set forth in Section 8.2 of the Offtake Agreement.

“**Invoice Amount**” has the meaning set forth in Section 9.2.

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

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which CCP is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**kWh**” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Late Payment Notice**” means a notice issued by CCP to a Project Participant pursuant to Section 9.7.

“**Late Payment Charge**” has the meaning set forth in Section 9.7.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lead Point Person**” has the meaning set forth in Exhibit D, Section 2.1.

“**Letter(s) of Credit**” has the meaning set forth in Section 1.1 the Offtake Agreement.

“**Losses**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the Offtake Agreement, determined in a commercially reasonable manner. Factors used in determining economic loss to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Project Participant, 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., NP-15), all of which should be calculated for the remaining Contract Term of the Offtake Agreement and must include the value of Capacity Attributes.

“**Month**” means a calendar month.

“**Monthly Costs**” has the meaning set forth in Section 9.1.

“**Monthly Energy Settlement Amount**” has the meaning set forth in Exhibit C of the Offtake Agreement.

“**Monthly Product Payment**” means the payment required to be made by CCP to Project Developer each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C of the Offtake Agreement.

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

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Non-Defaulting Project Participant**” has the meaning set forth in Section 12.1.

“**Normal Vote**” has the meaning set forth in Exhibit D, Section 3.5.

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

“**Offtake Agreement**” means the agreement between CCP and Project Developer for the purchase of wholesale energy market products of the Willow Rock Energy Storage Center, executed on **[Offtake Agreement Effective Date]**.

“**Offtake Agreement Defaulting Party**” has the meaning set forth in Section 11.1(a) of the Offtake Agreement.

“**Offtake Agreement Non-Defaulting Party**” has the meaning set forth in Section 11.2 of the Offtake Agreement.

“**Operating Account**” means an internal accounting mechanism utilized by CCP to track the amounts paid by and owed to each individual Project Participant pursuant to the terms of this Agreement.

“**Operations Advisory Subcommittee**” has the meaning set forth in Exhibit D, Section 3.1.

“**Operating Cost**” means the share of the Annual Budget or Amended Annual Budget attributable to the applicable Month for a Billing Statement.

“**Party**” has the meaning set forth in the Preamble.

“**Payment Default**” has the meaning set forth in Section 12.2.

“**Payment Default Termination Deadline**” has the meaning set forth in Section 12.6.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet of the Offtake Agreement.

“**Permitted Transferee**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**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.

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

“**Product**” has the meaning set forth in Section 3.1

“**Progress Report**” means a progress report including the items set forth in Exhibit E of the Offtake Agreement.

“**Project**” shall be broadly construed to entail the aggregate of rights, liabilities, interests, and obligations of CCP pursuant to the Offtake Agreement, including but not limited to all rights, liabilities, interests, and obligations associated with the Product, all rights, liabilities, interests and obligations associated with the Facility, and including all aspects of the operation and

administration of the Facility and the Offtake Agreement and the rights, liabilities, interests and obligations associated therewith.

“**Project Developer**” means GEM A-CAES LLC, a Delaware limited liability company, or assignee as permitted under the Offtake Agreement.

“**Project Participants**” means those entities executing this Agreement, as identified in the Preamble, together in each case with each entity’s successors or assigns.

“**Project Revenue Rights**” means all rights of a Project Participant under this Agreement to any revenue owed to CCP associated with the Facility, including the Monthly Energy Settlement Amount.

“**Project Rights**” means all rights and privileges of a Project Participant under this Agreement, including but not limited to its Entitlement Share, and its right to receive the Product from the Facility.

“**Project Rights and Obligations**” means the Project Participants’ Project Rights and obligations under the terms of this Agreement.

“**Proposed Entitlement Share Reduction Compensation Amount**” has the meaning set forth in Exhibit C.

“**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.

“**RA Deficiency Amount**” has the meaning set forth in Exhibit C of the Offtake Agreement.

“**Receiving Party**” has the meaning set forth in Section 18.2 of the Offtake Agreement.

“**Remedial Action Plan**” has the meaning set forth in Section 2.4 of the Offtake Agreement.

“**Replacement RA**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**Resource Adequacy Benefits**” has the meaning set forth in Section 1.1 of the Offtake Agreement.

“**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 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, 21-06-029, 21-06-035, 21-07-014, 22-03-034, 22-06-050, 23-04-010, 23-06-029, 24-06-040, 24-12-003, 25-06-048 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“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 the Facility’s Energy to and from the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by the Project Developer for electric generation or storage facilities owned by Project Developer other than the Facility.

“Site” has the meaning set forth in Section 1.1 of the Offtake Agreement, as further described in Exhibit A of the Offtake Agreement.

“Step-Up Allocation Cap” has the meaning set forth in Section 12.8(a).

“Step-Up Invoice” means an invoice sent to a Non-Defaulting Project Participant as a result of a Defaulting Project Participant’s Payment Default, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of the Defaulting Project Participant, as the case may be, pursuant to Section 12.7.

“Step-Up Invoice Amount” has the meaning set forth in Section 12.7.

“Step-Up Invoice Amount Cap” has the meaning set forth in Section 12.7.

“Step-Up Reserve Account” has the meaning set forth in Section 12.7(a)(i).

“Term” has the meaning set forth in Section 2.1(a).

“Terminated Transaction” has the meaning set forth in Section 11.2(a) the Offtake Agreement.

“Termination Payment” has the meaning set forth in Section 11.3 of the Offtake Agreement.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Uncontrollable Forces” means any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the

Effective Date), an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, licenseor permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Offtake Agreement, as defined therein.

“**Vice Chair**” has the meaning set forth in Exhibit D, Section 3.3.1.

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 shall mean 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 term 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;

(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; and

(n) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Offtake Agreement or the Coordinated Operations Agreement, the terms and provisions of this Agreement shall control.

ARTICLE 2

EFFECTIVE DATE AND TERM

2.1. Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the occurrence of all of the following: (i) the termination of the Offtake Agreement, (ii) the termination of the Buyer Liability Pass Through Agreements for all the Project Participants, and (iii) all Parties have met their obligations under this Agreement (“**Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. All indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

ARTICLE 3

AGREEMENT

3.1. Transaction. Subject to the terms and conditions of this Agreement, the Project Participants authorize CCP to purchase all Capacity Attributes associated with the Facility and any Replacement RA and Energy Settlement Revenues provided pursuant to the Offtake Agreement (collectively the “**Product**”), on behalf of the Project Participants. Pursuant to the procedures set

forth in the Coordinated Operations Agreement, CCP shall cause Project Developer to deliver each Project Participant's Entitlement Share of the Capacity Attributes to such Project Participant. CCP shall cause Project Developer to deliver any amounts owed to CCP associated with the Offtake Agreement, including the Monthly Energy Settlement Amount, RA Deficiency Amount, Construction Delay Damages, Commercial Operation Delay Damages, Capacity Damages, or any amounts otherwise owed to CCP pursuant to the Offtake Agreement. CCP shall administer the Offtake Agreement and oversee the Project Developer's development and operation of the Project. CCP shall not sell, assign, or otherwise transfer any Product, or any portion thereof, to any third party other than to the Project Participants, unless authorized by the Project Participants pursuant to this Agreement.

ARTICLE 4 **ENTITLEMENT SHARE**

4.1. Initial Entitlement Share. Each Project Participant's initial Entitlement Share as of the Effective Date shall be set forth in Column B of the Table provided in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps"). Any revisions to the Entitlement Shares specified in Exhibit B pursuant to Section 4.2 or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

4.2. Change of Entitlement Share. Any Project Participant may reduce its Entitlement Share of the Project pursuant to the process set forth in Exhibit C.

4.3. Reduction of Entitlement Share to Zero. If any Project Participant's Entitlement Share is reduced to zero through any process specified in Exhibit C, such Project Participant shall remain a Party to this Agreement and shall be subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Monthly Product Payments, Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the Offtake Agreement.

ARTICLE 5 **OBLIGATIONS OF CCP AND ROLE OF CCP BOARD**

5.1. Obligations of CCP.

(a) CCP shall take such commercially reasonable actions or implement such commercially reasonable measures as may be necessary or desirable for the utilization, maintenance, or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as CCP or the CCP Board deems to be in the Project Participants' best interests. To the extent not inconsistent with the Offtake Agreement or other applicable agreements, CCP may also be authorized by the Project Participants to assume any responsibilities in relation to the Project necessary to effectuate the conveyance of the Product to Project Participants in accordance with Project Participants' Entitlement Shares.

(b) To the extent such services are available and can be carried forth in accordance with the Offtake Agreement, CCP shall also provide such other services, as may be deemed necessary by CCP or the CCP Board to secure the benefits and/or satisfy the obligations associated with the Offtake Agreement.

(c) Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with this Section 5.1(c).

(i) The CCP Manager will prepare a proposed Annual Budget at least ninety (90) days prior to the beginning of each Fiscal Year during the Term of this Agreement. The proposed Annual Budget shall be based on the prior Fiscal Year's actual costs, as applicable, and shall include reasonable estimates of the costs CCP expects to incur during the applicable Fiscal Year in association with the administration of the Offtake Agreement. The CCP Manager shall present the proposed Annual Budget to the CCP Board. The CCP Board shall adopt the Annual Budget no later than thirty (30) days prior to the beginning of such Fiscal Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant.

(A) For operating costs not otherwise collected through Articles 8 and 9 incurred prior to the Commercial Operation Date and which are approved by the CCP Board, including costs related to administering the Offtake Agreement, overseeing the development and CAISO integration of the Project, and other costs that are determined to be attributable to the Project by action of the CCP Board, shall be invoiced to each Project Participant based on their Project Entitlement Share.

(ii) At any time after the adoption of the Annual Budget for a Fiscal Year, the CCP Manager may prepare a proposed Amended Annual Budget for and applicable to the remainder of such Fiscal Year. The proposal shall (A) explain why an amendment to the Annual Budget is needed, (B) compare estimated costs against actual costs, and (C) describe the events that triggered the need for additional funding. The CCP Manager shall present the proposed Amended Annual Budget to the CCP Board. Upon adoption of the Amended Annual Budget by the CCP Board, such Amended Annual Budget shall apply to the remainder of the Fiscal Year and the CCP Board shall cause copies of such adopted Amended Annual Budget to be delivered to each Project Participant.

(iii) Reports. CCP will prepare and issue to Project Participants the following reports each quarter of a year during the Term:

(A) Financial and operating statement relating to the Project.

(B) Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project. If CCP incurred any material costs to provide services that were deemed necessary pursuant to Section 5.1(b), the variance report shall identify the costs and describe the services provided.

(d) Records and Accounts. CCP will keep, or cause to be kept, accurate records and accounts of the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of CCP relating to the Project with respect to each Fiscal Year shall be subject to an annual audit.

Each Project Participant shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

(e) Information Sharing. Upon CCP's request, each Project Participant agrees to coordinate with CCP to provide such information, documentation, and certifications that are reasonably necessary for the administration, financing, refinancing, operation, scheduling, maintenance, attribute transfer, settlement, compliance reporting, and other ongoing activities of the Project, including information required to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(f) [Reserved].

(g) Deposit of Insurance Proceeds. CCP shall promptly attribute any insurance proceeds received by CCP from any insurance obtained pursuant to this Agreement or otherwise associated with the Project to the Operating Accounts of the Project Participants based on each Project Participants' Entitlement Shares.

(h) Liquidated and Other Damages. Any amounts paid to CCP or applied against payments otherwise due by CCP pursuant to the Offtake Agreement or each Project Participant's respective BLPTA, by the Project Developer shall be attributed on a pro rata share, based on each Project Participant's Entitlement Share, to each Project Participant's Operating Account. Liquidated Damages include, but are not limited to Construction Delay Damages, Commercial Operation Delay Damages, Capacity Damages, Damage Payment, and Termination Payment.

(i) [Reserved].

(j) Resale of Product. Any Project Participant may direct CCP to remarket such Project Participant's Entitlement Share of the Product, or such Project Participant's Entitlement Share of any part of the Product. If CCP incurs any expenses associated with the remarketing activities pursuant to this Section 5.1(j), then CCP shall include the total amount of such expenses as a Monthly Cost on the Project Participant's next Billing Statement. Prior to offering the Project Participant's Entitlement Share of the Product, or the Project Participant's Entitlement Share of any part of the Product to any third party, CCP shall first offer the Product or portion of the Product to the other Project Participants. The amount of compensation paid to the selling Project Participant shall be negotiated and agreed to between the selling Project Participant and the purchasing Project Participant or third party. Any payments for any resold Product pursuant to this Section 5.1(j) shall be transmitted directly from the purchasing Project Participant or purchasing third party to the reselling Project Participant. Any such resale to a third party shall not convey any rights or authority over the operation or administration of the Project, and the Project Participant shall not make a representation to the third party that the resale conveys any rights or authority over the operation of the Project.

(k) Uncontrollable Forces. CCP shall not be required to provide, and CCP shall not be liable for failure to provide, the Product, Replacement RA, or other service under this Agreement when such failure, or the cessation or curtailment of, or interference with, the service is caused by Uncontrollable Forces or by the failure of the Project Developer, or its

successors or assigns, to obtain any required governmental permits, licenses, or approvals to acquire, administer, or operate the Project; provided, however, that the Project Participants shall not thereby be relieved of their obligations to make payments under this Agreement except to the extent CCP is so relieved pursuant to the Offtake Agreement, and provided further that CCP shall pursue all applicable remedies against the Project Developer under the Offtake Agreement and distribute any remedies obtained pursuant to Section 5.1(h).

(l) Insurance. Within one hundred and eighty days (180) of the Effective Date of this Agreement, CCP shall secure and maintain, during the Term, insurance coverage as follows:

(i) Commercial General Liability. CCP shall maintain, or cause to be maintained, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering CCP's obligations under this Agreement and including each Project Participant as an additional insured.

(ii) Employer's Liability Insurance. CCP, if it has employees, shall maintain Employers' Liability insurance with limits of not less than One Million Dollars (\$1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(iii) Workers' Compensation Insurance. CCP, if it has employees, shall also maintain at all times during the Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars (\$1,000,000) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(iv) Business Auto Insurance. CCP shall maintain at all times during the Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of CCP's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name each Project Participant as an additional insured and contain standard cross-liability and severability of interest provisions.

(v) Public Entity Liability Insurance. CCP shall maintain public entity liability insurance, including public officials' liability insurance, public entity reimbursement insurance, and employment practices liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim, and an annual aggregate of not less than One Million Dollars (\$1,000,000) and CCP shall maintain such coverage for at least two (2) years from the termination of this Agreement.

(m) Evidence of Insurance. Within ten (10) days after the deadline for securing insurance coverage specified in Section 5.1(l), and upon annual renewal thereafter, CCP shall deliver to each Project Participant certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in a form evidencing all coverages set forth above. Such certificates shall specify that

each Project Participant shall be given at least thirty (30) days prior Notice by CCP in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of each Project Participant. Any other insurance maintained by CCP not associated with this Agreement is for the exclusive benefit of CCP and shall not in any manner inure to the benefit of Project Participants. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of each Project Participant for all work performed by CCP, its employees, agents and sub-contractors.

5.2. Role of CCP Board.

(a) The rights and obligations of CCP under the Offtake Agreement shall be subject to the ultimate control at all times of the CCP Board. The CCP Board shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the duties and responsibilities listed below, among others. The actions identified in Section 5.2(a)(ii) through (a)(ix) shall require CCP Board approval.

(i) Dispute Resolution. The CCP Board shall review, discuss and attempt to resolve any disputes among CCP, any of the Project Participants, and the Project Developer relating to the Project, the operation and management of the Facility, and CCP's rights and interests in the Facility.

(ii) Offtake Agreement. The CCP Board shall have the authority to review, modify, and approve, as appropriate, all amendments, modifications, and supplements to the Offtake Agreement.

(iii) [Reserved].

(iv) [Reserved].

(v) Budgeting. Upon the submission of a proposed Annual Budget or proposed Amended Annual Budget, the CCP Board shall review, modify, and approve each Annual Budget and Amended Annual Budget in accordance with Section 5.1(c) of this Agreement.

(vi) Early Termination of Offtake Agreement. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(b) of this Agreement, as to an early termination of the Offtake Agreement pursuant to Section 11.2 of the Offtake Agreement.

(vii) Assignment by Project Developer. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(c) of this Agreement, as to any assignment by Project Developer pursuant to Section 14.1 of the Offtake Agreement other than any assignment pursuant to Sections 14.2 or 14.3 of the Offtake Agreement.

(viii) Buyer Financing Assignment. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(d) of this Agreement, as to an assignment by CCP to a financing entity pursuant to Section 14.5 of the Offtake Agreement.

(ix) Change of Control. The CCP Board shall review, modify, and approve the recommendations of the CCP Manager, made pursuant to Section 6.2(e) of this Agreement, as to any Change of Control requiring CCP's consent, as specified in Section 14.1 of the Offtake Agreement.

(x) Supervening Authority of the Board. The CCP Board has complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the CCP Manager or which is specified as being within the authority of the CCP Manager pursuant to the provisions of this Agreement.

(xi) Other Matters. The CCP Board is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the CCP Manager as may be provided for under this Agreement and under the Offtake Agreement, or as may otherwise be appropriate.

(xii) Periodic Audits. The CCP Board or the CCP Manager may arrange for the annual audit by certified accountants, selected by the CCP Board and experienced in electric generation or electric utility accounting, of the books and accounting records of CCP and the Project Developer, to the extent authorized under the Offtake Agreement, and such audit shall be completed and submitted to the CCP Board as soon as reasonably practicable after the close of the Fiscal Year. CCP shall promptly furnish to the Project Participant copies of all audits. No more frequently than once every calendar year, each Project Participant may, at its sole cost and expense, audit, or cause to be audited the books and cost records of CCP and/or the Project Developer, to the extent authorized under the Offtake Agreement.

(b) Pursuant to Section 5.06 of the Joint Powers Agreement, this Agreement modifies the voting rules of the CCP Board for purposes of approving or acting on any matter identified in this Agreement, as follows:

(i) Quorum. A quorum shall consist of a majority of the CCP Board members that represent Project Participants.

(ii) Voting. Each CCP Board member that represents a Project Participant shall have one vote for any matter identified in this Agreement. Any CCP Board member representing a CCP member that is not a Project Participant shall abstain from voting on any matter identified in this Agreement. A vote of the majority of the CCP Board members representing Project Participants that are in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

ARTICLE 6

ROLE AND RESPONSIBILITIES OF CCP MANAGER

6.1. Role of CCP Manager. The CCP Manager shall take all actions necessary to ensure that CCP fulfills its obligations under this Agreement, including the obligations set forth in Section 5.1. The CCP Manager is authorized to take any action that CCP is authorized to take, except those actions that expressly require CCP Board approval. In addition to any duties or

responsibilities set forth elsewhere in this Agreement, the CCP Manager is directed to do the following:

(a) Consult with the Project Participants with respect to the ongoing administration of the Project, including through the formation of advisory subcommittees.

(b) Oversee, as appropriate, the completion of any Project-related contract negotiation, contract administration, CAISO integration, attribute and revenue transfers, settlements, preparation of compliance reporting, and dispute resolution.

(c) Review, discuss, and attempt to resolve any disputes among the Project Participants relating to this Agreement or the Offtake Agreement.

(d) Review, validate, dispute, approve and timely pay, as appropriate, each invoice submitted by Project Developer.

(e) Upon a request or demand by any third person that is not a Party to the Offtake Agreement or a Project Participant, for Confidential Information as described in Section 18.2 of the Offtake Agreement, the CCP Manager shall notify the Project Developer and coordinate the response of CCP and Project Participants.

(f) Review Progress Reports provided by Project Developer to CCP pursuant to Section 2.3 of the Offtake Agreement and participate in any associated meetings with Project Developer to discuss development and construction progress. If Project Developer provides a Progress Report to CCP, the CCP Manager shall promptly provide such Progress Report to each Project Participant. The CCP Manager shall promptly notify the Project Participants upon receiving a Progress Report from the Project Developer that identifies a delay to the Construction Start Date or Commercial Operation Date.

(g) Take any necessary actions or implement such measures as may be necessary to facilitate the transfer of Resource Adequacy Benefits from the Project Developer to the Project Participants.

(h) Perform such other functions and duties as may be provided for under this Agreement, the Offtake Agreement, or as may otherwise be appropriate or beneficial to the Project or the Project Participants, unless such action requires CCP Board approval pursuant to this Agreement.

6.2. CCP Manager Recommendations to the CCP Board.

(a) Budgeting. Recommend each proposed Annual Budget and proposed Amended Annual Budget for submission to the CCP Board for final approval.

(b) Early Termination of Offtake Agreement. Recommend to the CCP Board regarding an early termination of the Offtake Agreement pursuant to Section 11.2 of the Offtake Agreement.

(c) Assignment by Project Developer. Recommend to the CCP Board any proposed assignment by Project Developer pursuant to Section 14.1 of the Offtake Agreement other than any assignment pursuant to Sections 14.2 or 14.3 of the Offtake Agreement.

(d) Buyer Financing Assignment. Recommend to the CCP Board an assignment by CCP to a financing entity pursuant to Section 14.5 of the Offtake Agreement.

(e) Change of Control. Recommend to the CCP Board any Change of Control requiring CCP's consent, as specified in Section 14.1 of the Offtake Agreement.

6.3. CCP Manager Report to CCP Board on Actions relating to the Offtake Agreement or the Project. The CCP Manager shall report to the CCP Board on the occurrence of any of the following actions taken by the CCP Manager. Such report may be written or oral and shall be provided at the next CCP Board Meeting occurring within a reasonable amount of time after the action was taken. Any information included as part of such report may be provided by the CCP Manager in a manner that maintains the confidentiality of such information, as reasonably determined to be necessary by the CCP Manager.

(a) Confirmation by the CCP Manager that the requirements of Exhibit B of the Offtake Agreement have been satisfied, such that the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date has been achieved or extended.

(b) Any exercise of CCP's rights under the Offtake Agreement if an Event of Default has occurred under Section 11.1 of the Offtake Agreement.

(c) The approval or modification of any arrangements and instruments entered into by the Project Developer or any affiliate thereof to, among other things, secure certain performance requirements, including, but not limited to, the Offtake Agreement, the Development Security or the Performance Security and any other letter of credit delivered to, or for the benefit of, CCP by the Project Developer and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.

(d) The approval of any Remedial Action Plan submitted by Project Developer to CCP pursuant to Section 2.4 of the Offtake Agreement.

(e) The written acknowledgement by CCP of the occurrence of the Commercial Operation Date in accordance with Section 2.2 of the Offtake Agreement.

(f) The approval of the return of the Development Security to Project Developer in accordance with Section 8.7 of the Offtake Agreement.

(g) The approval of the return of any unused Performance Security to Project Developer in accordance with Section 8.8 of the Offtake Agreement.

(h) The collection of any liquidated damages owed by Project Developer to CCP under the Offtake Agreement, or any draw upon the Development Security or Performance Security.

6.4. Subcommittees. The CCP Manager may establish as needed subcommittees including, but not limited to, contract management, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorological, operating, insurance, governmental relations, environmental, and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the CCP Manager; provided, however, such authority, membership or duties shall not conflict with the provisions of the Offtake Agreement or this Agreement.

(a) Project Participant Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on any subcommittee in connection with their duties on such subcommittee shall be the responsibility of the Project Participant which they represent and shall not be an expense payable under this Agreement.

6.5. Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical, and other matters which may arise from time to time in connection with administration of the Offtake Agreement, in appropriate cases, duties and responsibilities of the CCP Board, as the case may be under this Section 6, may be delegated to the CCP Manager by the CCP Board upon notice to the Project Participants.

ARTICLE 7

COORDINATED OPERATIONS AGREEMENT

7.1. Coordinated Operations Agreement. The Project Participants hereby establish and agree to a Coordinated Operations Agreement by and among CCP and all Project Participants for purposes of operating the Project as set forth in Exhibit D of this Agreement, which shall be construed in accordance with the terms of this Agreement.

ARTICLE 8

OPERATING ACCOUNT

8.1. Calculation of Estimated Monthly Project Cost. No later than ninety (90) days prior to the start of the Fiscal Year in which the Commercial Operation Date is expected to occur, the CCP Manager shall present to the Project Participants a proposed Estimated Monthly Project Cost, which shall be equal to a forecast of expected Monthly Product Payments over an entire Contract Year, divided by twelve (12). The Project Participants shall review, and, if appropriate, recommend approval of, or modification to the proposed Estimated Monthly Project Cost.

8.2. Operating Account. CCP shall establish an Operating Account for each Project Participant. Such Operating Accounts are for the purpose of internally tracking the amounts paid by each Project Participant, any amounts owed to a Project Participant, Project Participant's Monthly Costs, and any balances held within the Operating Account.

(a) Operating Account Amount. The Operating Account Amount for each Project Participant shall be an amount equal to the product of (i) the Estimated Monthly Project

Cost (\$/month), (ii) three (3) (months), and (iii) such Project Participant's Entitlement Share (%) ("**Operating Account Amount**").

(b) Initial Funding of Operating Account. By no later than ninety (90) days prior to the expected Commercial Operation Date, each Project Participant shall pay to CCP an amount equal to that Project Participant's Operating Account Amount.

(c) Use of Operating Account. CCP may utilize the funds attributed to each Project Participant's Operating Account each month in an amount equal to the Monthly Costs multiplied by such Project Participant's Entitlement Share.

(d) Final Distribution of Operating Account. Following the expiration or earlier termination of the Offtake Agreement, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the Project Participants under this Agreement and upon satisfaction of all remaining costs and obligations of CCP under the Offtake Agreement, any amounts then remaining in any Project Participant's Operating Account shall be paid to the associated Project Participant.

ARTICLE 9 **BILLING**

9.1. Monthly Costs. The amount of a Project Participant's Monthly Costs for a particular Month shall be the product of (a) the Project Participant's Entitlement Share multiplied by (b) the sum of (i) the actual Monthly Product Payments for such Month plus (ii) the Operating Cost for such Month minus (iii) the positive revenue associated with the Monthly Energy Settlement Amount minus (iv) any RA Deficiency Amount, as shown in the following formula:

Project Participant's Monthly Cost = (Project Participant's Entitlement Share) × [(Monthly Product Payments) + (Operating Costs) – (Monthly Energy Settlement Amount) – (RA Deficiency Amount)]

9.2. Billing Statements. By no later than ten (10) calendar days after CCP receives an invoice from Project Developer for the prior Month during the Delivery Term pursuant to Section 8.1 of the Offtake Agreement, CCP shall issue to each Project Participant a copy of the invoice and a "Billing Statement," which specifies such Project Participant's Monthly Costs, itemized by each part of such Monthly Cost. The amount of Monthly Costs attributable to a Project Participant, and specified in such Billing Statement, shall be the "**Invoice Amount.**"

9.3. Disputed Monthly Billing Statement. A Project Participant may dispute, by written Notice to CCP, any portion of any Billing Statement submitted to that Project Participant by CCP pursuant to Section 9.2, provided that the Project Participant shall pay the full amount of the Billing Statement when due. If CCP determines that any portion of the Billing Statement is incorrect, CCP will attribute the difference between such correct amount and such full amount, if any, including interest at the rate received by CCP on any overpayment to such Project Participant's Operating Account. If CCP and a Project Participant disagree regarding the accuracy of a Billing Statement, CCP will give consideration to such dispute and will advise all Project Participants with regard to CCP's position relative thereto within thirty (30) days following receipt of written Notice by Project Participant of such dispute.

9.4. Payment Adjustments; Billing Errors. If CCP or Project Developer determines that a prior invoice or Billing Statement was inaccurate, CCP shall credit against or increase as appropriate each Project Participant's subsequent Monthly Costs according to such adjustment. The accompanying Billing Statement shall describe the cause of such adjustment and the amount of such adjustment.

9.5. Payment of Invoice Amount. Each Project Participant shall pay the Invoice Amount for the applicable Month to CCP by no later than the twentieth (20th) calendar day of the following Month after the Billing Statement is issued, unless CCP has failed to issue the Billing Statement by the deadline specified in Section 9.2, in which case, each Project Participant shall pay the Invoice Amount for the applicable Month by no later than thirty (30) days after the date on which CCP issues the Billing Statement to the Project Participant.

9.6. Deduction of Invoice Amount from Operating Account. After CCP issues a Billing Statement to a Project Participant or a Step-Up Invoice to a Project Participant, CCP shall deduct the Invoice Amount or the Step-Up Invoice Amount from each Project Participant's Operating Account. If the Monthly Cost attributable to such Project Participant is a negative number, CCP shall add such funds to the Operating Account of that Project Participant.

9.7. Late Payments.

(a) If any Project Participant fails to pay the Invoice Amount to CCP by the deadline specified in Section 9.5, then CCP will issue such Project Participant a Late Payment Notice within five (5) days of the deadline specified in Section 9.5 directing the Project Participant to immediately pay the Invoice Amount to CCP and informing the Project Participant that such Project Participant must pay a charge ("**Late Payment Charge**"). Upon issuing a Late Payment Notice to any Project Participant, CCP shall promptly provide Notice of such occurrence to all other Project Participants.

(b) The Late Payment Charge shall be equal to (i) the Invoice Amount minus any partial payment multiplied by (ii) the Interest Rate specified in Section 8.2 of the Offtake Agreement for the period from the deadline specified in Section 9.5 until the date on which the Project Participant pays the Invoice Amount plus the Late Payment Charge. Upon payment, CCP shall withdraw the full amount of such Late Payment Charge from the Project Participant's Operating Account and attribute any such Late Payment Charge to the Operating Accounts of all other Project Participants on a pro rata share, based on such other Project Participants' Entitlement Shares.

ARTICLE 10

UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS; LITIGATION

10.1. Unconditional Payment Obligation. Beginning with the earliest of (i) the date CCP is obligated to pay any portion of the costs of the Project, (ii) the date of the COD, or (iii) the date of the first delivery of the Product to Project Participants and continuing through the Term of this Agreement, Project Participants shall pay CCP the amounts of Monthly Costs set forth in the Billing Statements submitted by CCP to Project Participants in accordance with the provisions of

Section 9, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output or the provision of Facility products are suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever, provided that the obligation of Project Participants to pay amounts associated with the Monthly Product Payment shall be limited to the amount of Monthly Product Payment charged by the Project Developer to CCP and paid by CCP to the Project Developer.

10.2. Authorizations. Each Project Participant hereby represents and warrants that no order, approval, consent, or authorization of any governmental or public agency, authority, or person, is required on the part of such Project Participant for the execution and delivery by the Project Participant, or the performance by the Project Participant of its obligations under this Agreement except for such as have been obtained.

10.3. Conflicts. Each Project Participant represents and warrants to CCP as of the Effective Date that, to the Project Participant's knowledge, the execution and delivery of this Agreement by the Project Participants and the Project Participants' performance hereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on the Project Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of the Project Participant.

10.4. Litigation. Each Project Participant represents and warrants to CCP that, as of the Effective Date, to the Project Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against the Project Participant (service of process on the Project Participant having been made) in any court that questions the validity of the authorization, execution or delivery by the Project Participant of this Agreement, or the enforceability on the Project Participant of this Agreement.

10.5. San José Clean Energy.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; provided, however, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this Agreement.

(b) Limited Obligations. The City of San José's payment obligations under this Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

10.6. CleanPowerSF. With regard to CleanPowerSF only, (1) obligations under this Agreement are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount.

ARTICLE 11

RIGHTS AND OBLIGATIONS UNDER THE OFFTAKE AGREEMENT

11.1. CCP Rights and Obligations under the Offtake Agreement. Notwithstanding anything to the contrary contained in this Agreement: (i) the obligation of CCP to cause the delivery of the Project Participants' Entitlement Shares of the Product during the Delivery Term of this Agreement is limited to the Product which CCP receives from the Facility (or the Project Developer, as applicable); (ii) the obligation of CCP to pay any amount to Project Participants hereunder or to give credits against amounts due from Project Participants hereunder is limited to amounts CCP receives in connection with the transaction to which the payment or credit relates (or is otherwise available to CCP in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs (including costs related to Charging Energy), capacity costs, Facility costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which CCP is responsible under the Offtake Agreement shall be considered purchase costs, operating costs, energy costs, capacity costs, Facility costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by CCP and payable by Project Participants as provided in this Agreement; (iv) CCP shall carry out its obligations and exercise its rights under the Offtake Agreement in a commercially reasonable manner; (v) all remedies provided to CCP pursuant to the Offtake Agreement shall be provided to Project Participants in accordance with Section 5.1(h); and (vi) any Force Majeure under the Offtake Agreement or other event of force majeure affecting the delivery of Product pursuant to applicable provisions of the Offtake Agreement shall be considered an event caused by Uncontrollable Forces affecting CCP with respect to the delivery of the Product hereunder and CCP forwarding to Project Participants notices and information from the Project Developer concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a Notice that Uncontrollable Forces have occurred pursuant to Section 5.1 of this Agreement. Any net proceeds received by CCP from the sale of the Product by the Project Developer to any third-party as a result of a Force Majeure event or failure by CCP to accept delivery of Product pursuant to the Offtake Agreement and any reimbursement received by CCP for purchase of Replacement RA shall be remitted by CCP to the Project Participants in accordance with their respective Entitlement Shares.

ARTICLE 12

NONPERFORMANCE AND PAYMENT DEFAULT.

12.1. Nonperformance by Project Participants. If a Project Participant fails to perform any covenant, agreement, or obligation under this Agreement or shall cause CCP to be in default with respect to any undertaking entered into for the Project or to be in default under the Offtake Agreement (“**Defaulting Project Participant**”), CCP may, in the event the performance of any such obligation remains unsatisfied after thirty (30) days’ prior written notice thereof to such Project Participant and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of such Project Participant’s rights under this Agreement including any rights to its Entitlement Share of the Product, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Project Participant with regard to its failure to so perform. Any Project Participant that is not the Defaulting Project Participant (“**Non-Defaulting Project Participant**”) may submit Notice directly to the CCP Board, if such Non-Defaulting Project Participant determines that CCP is or may not be fully taking appropriate actions to enforce CCP’s rights under this Agreement against a Defaulting Project Participant. The CCP Board shall consider such Notice and direct CCP to take appropriate action, if any.

12.2. Payment Default. If any Project Participant fails to pay the Invoice Amount by the deadline specified in Section 9.5, and if such Participant has not paid the Invoice Amount plus the Late Payment Charge within ten (10) calendar days of the issuance of the Late Payment Notice to such Project Participant by CCP, then such occurrence shall constitute a “**Payment Default.**”

12.3. Payment Default Notice. Upon the occurrence of a Payment Default, CCP shall issue a Notice of Payment Default to the Project Participant notifying such Project Participant that as a result of a Payment Default, it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that such Defaulting Project Participant’s Project Revenue Rights have been suspended and that such Defaulting Project Participant’s Project Rights are subject to termination and disposal in accordance with Sections 12.6 and 12.8 of this Agreement. CCP shall provide a copy of such Notice of Default to all other Project Participants within five (5) calendar days after the issuance of the written Notice of Payment Default by CCP to the Defaulting Project Participant.

12.4. Cured Payment Default. If after a Payment Default, the Defaulting Project Participant cures such Payment Default within forty-five (45) calendar days after the issuance of the Late Payment Notice by CCP, the Defaulting Project Participant’s Project Revenue Rights shall be reinstated and its Project Rights shall not be subject to termination and disposal as provided for in Sections 12.6 and 12.8. In order to cure a Payment Default, the Defaulting Project Participant must pay to CCP the full amount of any unpaid Invoice Amounts and any associated Late Payment Penalties.

12.5. Suspension of Project Participant’s Project Revenue Rights and Treatment of Capacity Attributes.

(a) Upon the occurrence of a Payment Default, the Defaulting Project Participant’s Project Revenue Rights shall be suspended until such time as such Defaulting Project Participant cures the Payment Default pursuant to the requirements of Section 12.4. Any revenue

associated with the Monthly Energy Settlement Amount¹ shall be attributed by CCP to the Step-Up Reserve Account, as specified in Section 12.7.

(b) For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are sufficient to pay the entire Invoice Amount, CCP shall withdraw the Invoice Amount from such Defaulting Project Participant's Operating Account and shall cause the delivery of the Defaulting Project Participant's Entitlement Share of the Capacity Attributes associated with the Facility or otherwise provided for pursuant to the Offtake Agreement. For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are less than the amount necessary to pay the entire Invoice Amount, CCP shall withdraw all remaining funds from the Defaulting Project Participant's Operating Account, and to the extent reasonably possible, in CCP's sole discretion, CCP shall cause the delivery of a quantity of Capacity Attributes proportionate to the portion of the Invoice Amount that the remaining funds were sufficient to pay for. For any Month where the Defaulting Project Participant's Operating Account has no funds remaining, the Defaulting Project Participant shall have no right to any such Capacity Attributes associated with the Facility or otherwise provided for under the Offtake Agreement.

12.6. Termination and Disposal of Project Participant's Project Rights. If a Defaulting Project Participant has not cured a Payment Default within forty-five (45) calendar days after the payment deadline specified in Section 9.5 by CCP ("**Payment Default Termination Deadline**"), then all Project Rights and Obligations pursuant to this Agreement shall be terminated and disposed in accordance with Sections 12.6 and 12.8 of this Agreement; provided, however, that the Defaulting Project Participant shall be liable for all outstanding payment obligations accrued prior to the Payment Default Termination Deadline and shall remain subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the Offtake Agreement. CCP shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations of such Defaulting Project Participant. CCP shall immediately notify the other Project Participants of such termination of the Defaulting Project Participant's Project Rights and Obligations.

12.7. Step-Up Invoices.

(a) Upon the occurrence of a Payment Default, CCP shall, concurrently with the Late Payment Notice issued pursuant to Section 9.7(a), issue a Step-Up Invoice to each Non-Defaulting Project Participant that specifies such Non-Defaulting Project Participant's pro rata payment obligation, calculated based on the Entitlement Share of such Non-Defaulting Project Participant, of the amount of the Payment Default for the Defaulting Project Participant (the "**Step-Up Invoice Amount**"); provided, however, that a Non-Defaulting Project Participant's Step-Up Invoice Amount shall not exceed twenty-five percent (25%) of such Non-Defaulting Project Participant's Invoice Amount for the same month for which the Payment Default occurred (the "**Step-Up Invoice Amount Cap**").

¹ For discussion among Project Participants: Should only energy revenues flow to the Step-Up Reserve Account and not liquidated damages, or should all revenues and damages received go to the Step-Up Reserve Account?

(i) Each Non-Defaulting Project Participant shall pay the Step-Up Invoice Amount by the later of the twentieth (20th) calendar day of the following Month or thirty (30) days after the date on which CCP issues the Step-Up Invoice to the other Project Participants. No sooner than five (5) calendar days after CCP issues the Step-Up Invoice, CCP may deduct the amount of the Step-Up Invoice from each Project Participant's Operating Account and attribute such funds to a separate tracking account ("**Step-Up Reserve Account**"), which shall be accessible only by CCP, and which CCP may in its sole discretion deduct from in order to ensure that CCP can meet the payment obligations of the Offtake Agreement. CCP first shall deduct all funds from a Defaulting Project Participant's Operating Account before deducting funds from the Step-Up Reserve Account.

(ii) Application of Moneys Received from a Defaulting Project Participant. If a Defaulting Project Participant cures a Payment Default on or before the Payment Default Termination Deadline, any funds remaining in the Step-Up Reserve Account shall be attributed to the Operating Accounts of the other Project Participants on a pro rata share, based on the Entitlement Share of such other Project Participant. If a Defaulting Project Participant fails to cure a Payment Default and the Defaulting Project Participant's Project Rights and Obligations are terminated and disposed of in accordance with Section 12.8, any funds remaining in the Step-Up Reserve Account shall be attributed to the Operating Accounts of the Non-Defaulting Project Participants on a pro rata share, based on the Entitlement Share, subject to the Step-Up Invoice Amount Cap for each Non-Defaulting Project Participant. If any Non-Defaulting Project Participant has not paid the full amount of its share of the Step-Up Invoice Amount to CCP by the deadline specified in Section 12.7(a)(i), then such occurrence shall be a Late Payment as specified in Section 9.7(a) and is subject to a Late Payment Charge pursuant to Section 9.7(b), and any such Non-Defaulting Project Participant shall not be entitled to its share of any moneys received from the Defaulting Project Participant or any funds remaining in the Step-Up Reserve Account in accordance with this Section 12.7(a)(ii) until such Non-Defaulting Project Participant has paid to CCP the full amount of its Step-Up Invoice Amount and the Late Payment Charge.

12.8. Step-Up Allocation of Project Participant's Project Rights. In the event that a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to the other Project Participants ("**Step-Up Allocation**") pursuant to the process set forth in this Section 12.8. If a Project Participant has defaulted in the performance of any of its obligations under its BLPTA, and any applicable cure periods under the BLPTA have expired, the Project Participants shall, to the extent required by each respective Project Participant's BLPTA, utilize the procedures set forth in this Section 12.8 to allocate the Project Rights and Obligations of the Project Participant that has defaulted under the BLPTA to the Project Participants that have not defaulted under the BLPTA, subject to the Step-Up Allocation Cap specified in Section 12.8(a).

(a) Step-Up Allocation Cap. If a Defaulting Project Participant's Entitlement Share is allocated to the Non-Defaulting Project Participants pursuant to this Section 12.8, no individual Non-Defaulting Project Participant shall be obligated to assume an allocation that exceeds that Project Participant's Step-Up Allocation Cap set forth in Column E of the Table in Exhibit B of this Agreement. Each Non-Defaulting Project Participant's initial Step-Up Allocation Cap shall be equal to the Non-Defaulting Project Participant Entitlement Share as of the Effective Date and set forth in Column B of the Table in Exhibit B of this Agreement, multiplied by one

hundred and twenty-five percent (125%). If a Project Participant modifies its Entitlement Share pursuant to Section 4.2 of this Agreement, then that Project Participant's Step-Up Allocation Cap shall be equal to the Project Participant's Entitlement Share as modified pursuant to Section 4.2 multiplied by one hundred and twenty-five percent (125%). Upon a modification of a Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall cause the Step-Up Allocation Cap specified in Column E of the Table in Exhibit B of this Agreement to be modified in accordance with this Section 12.8(a). For avoidance of doubt, if a Project Participant's Entitlement Share is increased pursuant to Section 12.8(b) or (c), then such Project Participant's Step-Up Allocation Cap shall not be modified.

(b) Step-Up Allocation Share. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to each Non-Defaulting Project Participant based on such Non-Defaulting Project Participant's pro rata share, calculated based on its Entitlement Share of the difference of the entire project minus the Entitlement Share of the Defaulting Project Participant, unless such allocation would cause any individual Non-Defaulting Project Participant to exceed its Step-Up Allocation Cap, in which case Section 12.8(c) shall apply. Upon allocation of a defaulting Project Participant's Entitlement Share pursuant to this Section 12.8(b), the CCP Manager shall cause each affected Project Participant's Entitlement Share specified in Column D of the Table in Exhibit B to be modified in accordance with this Section 12.8.

(c) Voluntary Allocation of Project Rights in Excess of the Step-Up Allocation Caps. If the allocation of a Defaulting Project Participant's Entitlement Share pursuant to Section 12.8(b) would cause any Non-Defaulting Project Participant's Entitlement Share to exceed its Step-Up Allocation Cap, then no allocation shall occur pursuant to Section 12.8(b). In such case, the CCP Manager shall oversee the offering of the total amount of the Defaulting Project Participant's Entitlement Share to the Non-Defaulting Project Participants on a voluntary basis. The initial offering shall be to each Non-Defaulting Project Participant on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Defaulting Project Participant's Entitlement Share. If any portion of the Defaulting Project Participant's Entitlement Share remains unclaimed after the initial offering, then the remaining portion shall be offered to any Non-Defaulting Project Participant that accepted its full share of the Defaulting Project Participant's Entitlement Share in the initial offering on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that are participating in the subsequent round of offerings. The CCP Manager shall conduct subsequent offering rounds until either the total amount of the Defaulting Project Participant's Entitlement Share is accepted by one or more of the Non-Defaulting Project Participants or some portion of the Defaulting Project Participant's Entitlement Share remains, but all Non-Defaulting Project Participants have rejected such remaining amount.

(d) Step-Up Allocation Damage Payment. A Defaulting Project Participant shall owe to each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) a "**Step-Up Allocation Damage Payment**" equal to the Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Project Participant's Costs and Losses exceed its Gains, then the Step-Up Allocation Damage Payment shall be an amount owing to such

Non-Defaulting Project Participant. If the Non-Defaulting Project Participant's Gains exceed its Costs and Losses, then the Step-Up Allocation Damage Payment shall be zero dollars (\$0). A Defaulting Project Participant shall not be entitled to any Step-Up Allocation Damage Payment or any other damages otherwise authorized under this Agreement from any other Project Participant. The Step-Up Allocation Damage Payment does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages. Each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) shall calculate, in a commercially reasonable manner, the Step-Up Allocation Damage Payment for the Defaulting Project Participant's Entitlement Share assumed by the Non-Defaulting Project Participant as of the effective date of such Step-Up Allocation. 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. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

(e) Remarketing of Unclaimed Defaulting Project Participant's Entitlement Share. If after the process set forth in Section 12.8(c), some portion of the Defaulting Project Participant's Entitlement Share remains unclaimed, the CCP Manager, in their discretion or as directed by the Non-Defaulting Project Participants, may take any action to generate revenue from such unclaimed Entitlement Share in order to meet CCP's payment obligation under the Offtake Agreement. For avoidance of doubt, the CCP Manager shall not be limited by the requirements of Section 4.2 or 5.1(j) of this Agreement in remarketing or generating revenue based on the unclaimed share.

12.9. Elimination or Reduction of Payment Obligations. Notwithstanding anything to the contrary in this Agreement, upon termination of a Defaulting Project Participant's Project Rights pursuant to Section 12.6 and the disposal steps of such Defaulting Project Participant's Project Rights and Obligations have been undertaken pursuant to Section 12.8, but the full disposal of the Project Participant's Project Rights and Obligations have not been completed such that 100% of the Entitlement Shares are accounted for among parties other than the Defaulting Project Participant, such Defaulting Project Participant's obligation to make payments under this Agreement (notwithstanding anything to the contrary herein) shall not be eliminated or reduced; provided, however, such payment obligations for the Defaulting Project Participant may be

eliminated or reduced to the extent permitted by law, through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement.

ARTICLE 13 **LIABILITY**

13.1. Project Participants' Obligations Several. No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant or for the obligations of CCP incurred on behalf of other Project Participants. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of Project Participants to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

13.2. No Liability of CCP or Project Participants. Except as provided for under Section 13.5 herein, the Parties agree that neither CCP, Project Participants, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "**Released Parties**") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Project Developer under the Offtake Agreement. Except as provided for under Section 13.5 herein, each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement (excluding gross negligence and willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve CCP or any Project Participants from their respective obligations under this Agreement, including, without limitation, the Project Participants' obligation to make payments required under Section 9.5 of this Agreement and CCP's obligation to make payments under Section 8.2 of the Offtake Agreement. The provisions of this Section 13.2 shall not be construed so as to relieve the CCP or the Project Developer from any obligation or liability under this Agreement or the Offtake Agreement.

13.3. Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, any Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of any other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other monetary damages owed by the other Party in accordance with the terms of this Agreement.

13.4. No General Liability of CCP. The undertakings under this Agreement by CCP shall not constitute a debt or indebtedness of CCP within the meaning of any provision or limitation of the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.

13.5. Indemnification. Each Party shall indemnify, defend, protect, hold harmless, and release the other Parties, their directors, board members, officers, employees, agents, attorneys and advisors, past, present or future, from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise, which include, without limitation, death, bodily injury, or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons, that may be imposed on, incurred by or asserted against any Party arising by manner of any breach of this Agreement, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of any Party or any Party's directors, board members, officers, employees, agents and advisors, past, present or future.

ARTICLE 14 **NOTICES**

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

14.2. 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, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail;

(b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5:00 pm, on the next Business Day; 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 15 **ASSIGNMENT**

15.1. General Prohibition on Assignments. No Party may assign this Agreement, or its rights or obligations under this Agreement, without the prior written consent of all other Parties, in each Party's sole discretion.

ARTICLE 16 **GOVERNING LAW AND DISPUTE RESOLUTION**

16.1. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action, or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by all Parties, or in the absence of mutual agreement, the County of Sacramento.

16.2. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law or in equity.

ARTICLE 17 **MISCELLANEOUS**

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties 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. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

17.2. Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of all Parties; *provided*, this Agreement may not be amended by electronic mail communications. Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

17.3. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

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

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

17.6. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

17.7. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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

17.9. City of San Francisco Standard Provisions.

(a) False Claims. Pursuant to San Francisco Administrative Code § 21.35, any Party to this Agreement who submits a false claim shall be liable to the City and County of San Francisco for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City and County of San Francisco if the Party: (i) knowingly presents or causes to be presented to an officer or employee of the City and County of San Francisco a false claim or request for payment or approval; (ii) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City and County of San Francisco; (iii) conspires to defraud the City and County of San Francisco by getting a false claim allowed or paid by the City and County of San Francisco; (iv) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City and County of San Francisco; or (v) is a beneficiary of an inadvertent submission of a false claim to the City and County of San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County of San Francisco within a reasonable time after discovery of the false claim.

(b) Political Activity. In performing its responsibilities under this Agreement, CCP shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City and County of San Francisco for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

(c) Non-discrimination Requirements.

(i) Non-discrimination in Contracts. CCP shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. CCP shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. CCP is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. CCP does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to CCP’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(e) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(f) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products:

(i) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth.

(ii) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, CCP shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products.

(iii) Failure of CCP to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José's Compliance Officer may require the Parties to file, and cause any Party's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

(b) Conflict of Interest. The Parties represent that they are familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Parties certify that, as of the Effective Date, are unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Parties shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Parties have the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and a Party shall immediately notify the City of San José in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. A Party's violation of this Section 17.10(b) is a material breach.

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. The Parties shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

(e) Disqualification of Former Employees. The Parties represent that they are familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Parties shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

17.11. Further Assurances. Each of the Parties hereto agrees 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.

[Signatures on following page]

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

<p>California Community Power</p> <p>By:</p> <p>Name: <u>Alexander Morris</u></p> <p>Title: <u>General Manager</u></p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: <u>Tony Braun</u></p> <p>Title: <u>General Counsel</u></p>	<p>CleanPowerSF</p> <p>By:</p> <p>Name: <u>Dennis J. Herrera</u></p> <p>Title: <u>General Manager, San Francisco Public Utilities Commission</u></p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: <u>William Sanders</u></p> <p>Title: <u>Deputy City Attorney</u></p>
<p>Peninsula Clean Energy Authority</p> <p>By:</p> <p>Name: <u>Shawn Marshall</u></p> <p>Title: <u>Chief Executive Officer</u></p>	<p>Redwood Coast Energy Authority</p> <p>By:</p> <p>Name: <u>Elizabeth Burks</u></p> <p>Title: <u>Executive Director</u></p>
<p>San José Clean Energy</p> <p>By:</p> <p>Name: <u>Lori Mitchell</u></p> <p>Title: <u>Director of San José Clean Energy</u></p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: <u>William Charley</u></p> <p>Title: <u>Senior Deputy City Attorney</u></p>	<p>Silicon Valley Clean Energy</p> <p>By:</p> <p>Name: <u>Monica Padilla</u></p> <p>Title: <u>Chief Executive Officer</u></p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: <u>Michael Callahan</u></p> <p>Title: <u>General Counsel</u></p>

<p>Valley Clean Energy</p> <p>By:</p> <p>Name: <u>Mitch Sears</u></p> <p>Title: <u>Chief Executive Officer</u></p>	
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EXHIBIT A

NOTICES

Party	<i>All Notices</i>	<i>Invoices</i>
California Community Power	<p>California Community Power Alexander Morris, General Manager 901 H Street Ste 120, PMB 157 Sacramento, CA 95814 amorris@cacommunitypower.org</p>	<p>California Community Power Attn: Accounting 901 H Street Ste 120, PMB 157 Sacramento, CA 95814 amorris@cacommunitypower.org mmaher@mahercpa.com</p>
CleanPowerSF	<p>CleanPowerSF Barbara Hale, Assistant General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 bhale@sfgwater.org</p>	<p>CleanPowerSF CleanPowerSF Accounts Payable San Francisco Public Utilities Commission 525 Golden Gate Ave, 7th Floor San Francisco, CA 94102 CleanPowerSFAP@sfgwater.org</p>
Peninsula Clean Energy	<p>Peninsula Clean Energy Authority Shawn Marshall, Chief Executive Officer Peninsula Clean Energy Authority 2075 Woodside Road Redwood City, CA 94061 smarshall@peninsulacleanenergy.com</p>	<p>Peninsula Clean Energy Authority Finance Department Attn: Chief Financial Officer Peninsula Clean Energy Authority 2075 Woodside Road Redwood City, CA 94061 finance@peninsulacleanenergy.com</p>
Redwood Coast Energy Authority	<p>Redwood Coast Energy Authority Elizabeth Burks, Executive Director 633 Third Street Eureka, CA 95501 bburks@redwoodenergy.org</p>	<p>Redwood Coast Energy Authority Attn: Accounting 633 Third Street Eureka, CA 95501 707-269-1700, ext. 305 ap@redwoodenergy.org</p>

Party	<i>All Notices</i>	<i>Invoices</i>
San José Clean Energy	<p>San José Clean Energy Lori Mitchell, Director, Energy San José Clean Energy 200 E. Santa Clara Street, San José, CA 95113 Lori.Mitchell@sanjoseca.gov With a copy to: Attn: Senior Deputy City Attorney, Energy 200 E. Santa Clara Street, 16th Floor San José, CA 95113 mailto:CAO.Main@sanjoseca.gov Overnight Courier: 4 N. 2nd St., Ste. 700 San José, CA 95113</p>	<p>San José Clean Energy Invoices, San José Clean Energy 200 E. Santa Clara Street, San José, CA 95113 Invoices@sanjosecleanenergy.org With a copy to: Attn: Monica Gorham Monica.Gorham@sanjoseca.gov</p>
Silicon Valley Clean Energy	<p>Silicon Valley Clean Energy Authority Monica Padilla, Chief Executive Officer 333 W El Camino Real, Suite 330 Sunnyvale, CA 94087 monica.padilla@svcleanenergy.org</p>	<p>Silicon Valley Clean Energy Authority Attn: Finance Group 333 W El Camino Real, Suite 330 Sunnyvale, CA 94087 (408) 721-5301 invoices@svcleanenergy.org</p>
Valley Clean Energy	<p>Valley Clean Energy Chad Curran Director of Power Services 604 2nd Street Davis, CA 95616 chad.curran@valleycleanenergy.org</p>	<p>Valley Clean Energy Attn: Alisa Lembke 604 2nd Street Davis, CA 95616 (530) 446-2750 accounting@valleycleanenergy.org</p>

EXHIBIT B

**SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES
AND STEP-UP ALLOCATION CAPS**

Dated: _____

A	B	C	D	E
Project Participant	Entitlement Share <i>As of Effective Date</i>	Entitlement Share <i>As Modified Pursuant to Section 4.2</i>	Entitlement Share <i>As Modified Pursuant to Section 12.8(b) or 12.8(c)</i>	Step-Up Allocation Cap <i>125% multiplied by Column B or C as applicable</i>
CleanPowerSF	23.00%			28.75%
Peninsula Clean Energy	30.00%			37.50%
Redwood Coast Energy Authority	6.20%			7.75%
San José Clean Energy	24.00%			30.00%
Silicon Valley Clean Energy	11.40%			14.25%
Valley Clean Energy	5.40%			6.75%
Total	100%			

Instructions: If the CCP Manager modifies one or more Project Participant’s Entitlement Share pursuant to Section 4.2, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or D) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column C. If the CCP Manager modifies one or more Project Participant’s Entitlement Share pursuant to Section 12.8, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or Column C) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column D.

EXHIBIT C

PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT'S ENTITLEMENT SHARE

(a) Offer to Other Project Participants. A Project Participant proposing to reduce its Entitlement Share of the Project shall provide Notice to all other Project Participants and CCP specifying the quantity of the proposed reduction of Entitlement Share ("**Entitlement Share Reduction Amount**") and the first Month for which the Project Participant Proposes that the change of Entitlement Share would become effective (such Notice referred to as the "**Entitlement Share Reduction Notice**").

(i) Upon receiving an Entitlement Share Reduction Notice from any Project Participant, the CCP Manager shall promptly do all of the following:

(A) Establish Entitlement Share Reduction Compensation Amount. The CCP Manager shall secure at least one (1), but no more than three (3), valuations of the net present value of the Entitlement Share Reduction Amount over the remaining term of the Offtake Agreement from one or more qualified firm(s) with the requisite experience to determine such valuation. The valuation, or if more than one valuation is obtained, the average of all valuations received, shall be the "**Proposed Entitlement Share Reduction Compensation Amount**." The CCP Manager shall present the Proposed Entitlement Share Reduction Compensation Amount to the Project Participants. The Project Participants shall by a Normal Vote either approve the Proposed Entitlement Share Reduction Compensation Amount or direct the CCP Manager to secure additional valuations. The Proposed Entitlement Share Reduction Compensation Amount approved by the Project Participants shall be the "**Entitlement Share Reduction Compensation Amount**." The Project Participant proposing to reduce its Entitlement Share may modify the quantity of the Entitlement Share Reduction Amount associated with its proposal or withdraw its proposal at any time prior to the initiation of the process set forth in paragraph (a)(i)(B).

(B) Oversee the Offering of the Entitlement Share Reduction Amount to Other Project Participants. The CCP Manager shall facilitate the offering of the Entitlement Share Reduction Amount to the other Project Participants through multiple rounds of offerings.

a) The initial offering shall be to each Project Participant on a pro rata share, based on such Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Entitlement Share Reduction Amount offered to the Project Participant through this process. If any portion of the Entitlement Share Reduction Amount remains after the initial offering, then the remaining portion shall be offered to any Project Participant that accepted the share of the Entitlement Share Reduction Amount offered in the initial offering on a pro rata share, based on such Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that accepted the portion of the Entitlement Share Reduction Amount offered to them in the initial offering.

b) The CCP Manager shall conduct subsequent offering rounds until either the total Entitlement Share Reduction Amount is accepted by one or more of the other Project Participants or some portion of the Entitlement Share Reduction Amount remains, but all Project Participants have rejected such amount.

c) Any Project Participant accepting a share of the offered Entitlement Share Reduction Amount shall either pay the offering Project Participant or be compensated by the offering Project Participant at the Entitlement Share Reduction Compensation Amount multiplied by the quantity of the portion being accepted.

d) Before a transfer of all or a portion of any Project Participant's Entitlement share to another Project Participant can become effective, the proposed transfer must be submitted to and approved by the CCP Manager.

e) After acceptance and payment for such portion of the Entitlement Share Reduction Amount, the CCP Manager shall cause the Entitlement Share specified in Exhibit B to be modified accordingly, and such modification shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

(C) Oversee the Offering of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in paragraph (a)(i)(B) is complete, then the Project Participant proposing to reduce its Entitlement Share may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If any CCP Member wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the CCP Member to become a Project Participant through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement and the CCP Member becoming a Project Participant. The compensation amount associated with the CCP Member accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the CCP Member and the offering Project Participant.

(D) Oversee the Offering of the Entitlement Share Reduction Amount to a Community Choice Aggregator that is not a CCP Member. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in both paragraphs (a)(i)(B) and (a)(i)(C) is complete, then the Project Participant proposing to reduce its Entitlement Share, may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to a Community Choice Aggregator that is not a CCP Member. If any Community Choice Aggregator wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the Community Choice Aggregator to become a CCP Member, and subsequent to becoming a CCP Member, to become a Project Participant through an amendment to this Agreement that is subject to the consent and approval of all Parties to this Agreement and the Community Choice Aggregator becoming a Project Participant. The compensation amount associated with the Community Choice Aggregator accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the Community Choice Aggregator and the offering Project Participant.

EXHIBIT D

COORDINATED OPERATIONS AGREEMENT

1. AGREEMENT; TERM

- 1.1 Agreement. This Coordinated Operations Agreement establishes the structure for CCP to oversee the operations of the Project and for the Project Participants to advise CCP on the operation of the Project through the Operations Advisory Subcommittee.

2. LEAD POINT PERSON

- 2.1 Lead Point Person. The CCP Manager shall appoint a “**Lead Point Person**,” who shall be an employee of CCP with the responsibilities set forth herein.
- 2.2 Lead Point Person Responsibilities. In consultation with the Operations Advisory Subcommittee, the Lead Point Person shall be responsible for fulfilling the operational requirements of the Project Participation Share Agreement, the Offtake Agreement, and CCP policies, and developing the procedures, protocols, and strategies relating to the operations of the Project. Examples include, but are not limited to, the following tasks, as applicable:
- settlements;
 - after-the-fact analysis;
 - Project inspections and performance testing;
 - meter testing, calibration, and certification;
 - compliance, Project performance, and market operations reporting;
 - records management;
 - facilitation of Capacity Attribute or other Product delivery, certification, and (subject to individual Project Participants’ authorization for their Entitlement Share) resale;
 - and any other relevant operational activities relating to the Project.
- 2.3 Reporting. Commencing no later than twelve (12) months prior to the expected COD, the Lead Point Person shall provide regular reports, no less frequently than monthly, to the Operations Advisory Subcommittee regarding the status and performance of the Project and any actions taken by the Lead Point Person on a regular cadence, as requested by the Operations Advisory Subcommittee.
- 2.4 Calling and Leading Meeting. The Lead Point Person shall call and lead meetings of the Operations Advisory Subcommittee, shall coordinate the Operations Advisory Subcommittee meetings with the Chair and Vice Chair, and shall follow the guidance of the Operations Advisory Subcommittee and any Normal Votes or Alternate Normal Votes by the Operations Advisory Subcommittee in his or her management of the Project.

3. OPERATIONS ADVISORY SUBCOMMITTEE

- 3.1 Operations Advisory Subcommittee. The Project Participants shall form an “**Operations Advisory Subcommittee**” with the responsibilities set forth below to advise the Lead Point Person upon all actions reasonably necessary to ensure that the Project Participants may obtain the benefits of the Offtake Agreement in a manner consistent with the terms and conditions of the Offtake Agreement.
- 3.2 Operations Advisory Subcommittee Membership. The Operations Advisory Subcommittee shall consist of one representative from each Project Participant and the Lead Point Person. An alternate representative may attend all meetings of the Operations Advisory Subcommittee but may vote only if the representative for whom they serve as alternate is absent. The Lead Point Person may bring in additional CCP staff as needed to support the operations of and reporting on the status of the Project.
- 3.3 Operations Advisory Subcommittee Leadership.
- 3.3.1 The Project Participants shall on an annual basis elect through a Normal Vote of the Operations Advisory Subcommittee a “**Chair**” and “**Vice Chair**” from among the Project Participants to coordinate the Operations Advisory Subcommittee meetings with the Lead Point Person and provide more regular feedback and guidance to the Lead Point Person on the operation of the Project and management of the Operations Advisory Subcommittee.
- 3.3.2 The Chair and Vice Chair shall review and curate materials to be presented to the Operations Advisory Subcommittee by the Lead Point Person, as appropriate.
- 3.3.3 The Chair and Vice Chair roles shall each be subject to a continuous term limit of two (2) years and shall be representatives from different Project Participants.
- 3.4 Operations Advisory Subcommittee Responsibilities.
- 3.4.1 Unless otherwise agreed to by the Operations Advisory Subcommittee and Lead Point Person, the Operations Advisory Subcommittee shall meet no less than monthly to review the activities of and advise the Lead Point Person upon the development and implementation of the CCP policies, procedures, protocols, and strategies relating to the operations of the Project. At least one representative from each Project Participant and the Lead Point Person shall be present at each meeting.
- 3.4.2 To the extent a Project Participant is unable to attend a meeting, such Project Participant shall delegate his or her advisory vote.
- 3.4.3 Any Project Participant may call for a meeting of the Operations Advisory

Subcommittee during normal business hours

- 3.5 Operations Advisory Subcommittee Voting Procedures. All advisory votes by the Project Participants within the Operations Advisory Subcommittee for any policies, procedures, protocols, and strategies relating to the operations of the Project, shall proceed pursuant to the “**Normal Vote**” process:
- 3.5.1 Quorum. No Normal Vote of the Operations Advisory Subcommittee shall be taken unless a representative is present or a vote is delegated for at least fifty percent (50%) of the total number of Project Participants; provided, however, that the Lead Point Person, Chair, and Vice Chair may call for a Normal Vote to be conducted by email, in which case at least fifty percent (50%) of the total number of Project Participants shall participate in the Normal Vote for a quorum to be met. For avoidance of doubt, the Lead Point Person shall not be a voting party, unless delegated a vote(s) by a Project Participant(s), pursuant to Exhibit D, Section 3.7.
- 3.5.2 Initial Normal Vote. All advisory guidance shall be informed by an affirmative vote of at least fifty-one percent (51%) of the total number of Project Participants, without regard to each Project Participant’s Entitlement Share; provided, however, any representative of the Operations Advisory Subcommittee may request an Alternate Normal Vote.
- 3.5.3 Alternate Normal Vote. Any representative of the Operations Advisory Subcommittee may request that any Normal Vote be taken on an Entitlement Share basis (referred to as an “**Alternate Normal Vote**”). If a representative requests an Alternate Normal Vote, such Alternate Normal Vote shall replace and take precedence over any Normal Vote that may have been taken on the applicable matter. The following vote requirements shall apply to an Alternate Normal Vote:
- 3.5.3.1 If any individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all advisory guidance for which an Alternate Normal Vote is taken, shall require that the Project Participant with an Entitlement Share exceeding fifty percent (50%) plus any other Project Participant vote in the affirmative.
- 3.5.3.2 If no individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all advisory guidance for which an Alternate Normal Vote is taken, shall require an affirmative vote of Project Participants having Entitlement Shares aggregating at least fifty-one percent (51%) of the total Entitlement Shares
- 3.6 Inaction. If the Operations Advisory Subcommittee is unable or fails to agree

with respect to any matter or dispute which it is authorized to advise upon or otherwise act upon after a reasonable opportunity to do so, then the Lead Point Person or CCP Manager shall notify the CCP Board of such matter or dispute, provided, however, the CCP Manager may take such action as, in their discretion, they determine is necessary for the timely performance of any requirement pursuant to the Offtake Agreement.

- 3.7 Delegation. Duties and responsibilities of the Operations Advisory Subcommittee may be delegated to any individual in the Operations Advisory Subcommittee, including the Lead Point Person, upon agreement according to a Normal Vote among the Project Participants. Any Project Participant may delegate its vote to the Lead Point Person or another Project Participant prior to any meeting by giving Notice to all of the Project Participants.
- 3.8 Role of CCP Board. The rights and obligations of the Operations Advisory Subcommittee, CCP Manager, and Lead Point Person under this Coordinated Operations Agreement shall be subject to the ultimate control at all times of the CCP Board.

BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of [Effective Date] (the “**BLPTA Effective Date**”) by and between the [Member Name], a California [joint powers authority] (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and GEM A-CAES LLC a Delaware limited liability company (together with its successors and permitted assigns “**Seller**”). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

RECITALS

WHEREAS, CC Power and Seller have entered into that certain Resource Adequacy and TB4 energy settlement (“**RA+TB4**”) (as amended, restated or otherwise modified from time to time, the “**Offtake Agreement**”) dated as of [Offtake Agreement Effective Date];

WHEREAS, Project Participant is entering into this BLPTA to secure, in part, California Community Power’s obligations under the Offtake Agreement;

WHEREAS, Project Participant is named as a Project Participant under the Offtake Agreement and will derive substantial direct and indirect benefits from the execution and delivery of the Offtake Agreement;

WHEREAS, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

WHEREAS, initially capitalized terms used but not defined herein have the meaning set forth in the Offtake Agreement.

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:

AGREEMENT

1. **Project Participant Covenants**. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of [Project Participation Entitlement Share]% (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the Offtake Agreement, including liabilities for Monthly Capacity Payments, the Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the Offtake Agreement, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the Offtake Agreement shall reduce Project Participant’s liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant’s Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the

terms and conditions of the Offtake Agreement, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver**. In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the Offtake Agreement, but the foregoing waiver does not apply to any other right or remedy of Seller under the Offtake Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the Offtake Agreement or any other amounts incurred or accrued prior to termination of the Offtake Agreement and the right to terminate the Offtake Agreement as the result of an Event of Default by Buyer.

3. **Demand Notice**. For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the Offtake Agreement and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable. If CC Power fails to pay any amount when due pursuant to the Offtake Agreement, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant's Liability Share of the unpaid Guaranteed Amount (a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably specify (a) in what manner and what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant's Liability Share of the unpaid Guaranteed Amount.

4. **Step-Up Events**. Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit S to the Offtake Agreement will be deemed amended to reflect the Project Participant's Revised Liability Share; *provided* that the Project Participant's Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project Participant's Initial Liability Share.

5. **Scope and Duration of BLPTA**. The obligations under this BLPTA are independent of the obligations of CC Power under the Offtake Agreement, and an action may be

brought to enforce this BLPTA whether or not action is brought against CC Power under the Offtake Agreement. This BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the Offtake Agreement has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the Offtake Agreement are paid in full (whether directly or indirectly such as through set-off or netting) or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

- a) The extension of time for the payment of any Guaranteed Amount; or
- b) Any amendment, modification or other alteration of the Offtake Agreement; or
- c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or
- d) 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 CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the Offtake Agreement imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding; or
- e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
- f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or
- g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the Offtake Agreement; or
- h) 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 Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

6. **Waivers by Project Participant.** Project Participant hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against CC Power under the Offtake Agreement or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the Offtake Agreement have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power or any other Person who has provided a BLPTA or other security or guaranty with respect to the Offtake Agreement now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the Offtake Agreement and waives any defense based on CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

7. **Project Participant Representations and Warranties.** Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, 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 member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

8. **Seller Representations and Warranties.** Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court,

governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, 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 Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. California Community Power Representations and Warranties. California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, 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 member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

10. Notices. Notices under this BLPTA 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. 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 Seller:

Street: 333 Bay Street, Suite 520
City: Toronto, ON M5H 2R2, Canada
Attn: Jordan Cole, Chief Commercial
Officer

Phone: +1 (416) 409-8549
Email: jordan.cole@hydrostor.ca

If delivered to Project Participant:

[Project Participant Notice Provisions]

If delivered to CC Power:

Attn: General Manager
California Community Power
901 H Street, Suite 120
PMB 157
Sacramento, CA 95814
Phone: 310-617-3441
amorris@cacommunitypower.org
with cc to: joshua.nelson@bbklaw.com

11. Governing Law and Forum Selection. This BLPTA 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 BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of Sacramento.

12. Miscellaneous. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA 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 BLPTA 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 BLPTA and all other provisions shall remain in full force and effect. This BLPTA 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 BLPTA 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.

13. Assignment. Except as provided below in this Paragraph 12, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the

Offtake Agreement, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant's obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment.

14. No Recourse to Members of Project Participant. Project Participant 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. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. No Recourse to Members of CC Power. CC Power 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. Except as expressly set forth in the Offtake Agreement and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

16. CleanPowerSF as Project Participant. Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

a) **Designated Fund.** CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("**SFPUC**") or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco (the "**City**").

b) Controller Certification. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

c) Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

d) Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

e) Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for

the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

i) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

j) Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller’s operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

k) Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

l) Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a

candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at anytime from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

m) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth; (b) except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products; and (c) failure of Seller to comply with any of the requirements of Chapter 8 of the City's Environment Code shall be deemed a material breach of contract.

o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

17. City of San José (San José Clean Energy) as Project Participant. Paragraph 14 shall not apply if the City of San José, as administrator of San José Clean Energy ("SJCE") is the Project Participant, but the following shall apply:

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided, however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4,

Part 63, Section 4.80.4050 *et. seq.*) (“**Designated Fund**”) for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE’s obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE’s payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José CleanEnergy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City’s Compliance Officer may require Seller to file, and cause any Seller’s subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City’s Compliance Officer designates. They shall contain such information, data and/or records as the City’s Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller’s violation of this subsection (d) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled “Prohibition of City Funding for Purchase of Single serving Bottled Water,” and San José City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy,” as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.1(e) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08

of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[PROJECT PARTICIPANT],
a California [joint powers authority]

By: _____

Printed Name: _____

Title: _____

CALIFORNIA COMMUNITY POWER,
a California joint powers authority

By: _____

Printed Name: _____

Title: _____

GEM A-CAES LLC
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

CONFIDENTIAL:
CC Power – December 10, 2025

RESOURCE ADEQUACY AND TB4 AGREEMENT

COVER SHEET

Seller: GEM A-CAES LLC, a Delaware limited liability company (“**Seller**”)

Buyer: California Community Power, a California joint powers authority (“**Buyer**”)

Description of Facility: A 500 MW / 4,000 MWh compressed air energy storage facility, located in Kern County, in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	[REDACTED]
Full Capacity Deliverability Status obtained	[REDACTED]
Executed Interconnection Agreement	[REDACTED]
Evidence of Site Control	[REDACTED]
Documentation of Conditional Use Permit if required: [x] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	[REDACTED]
Material Permits obtained	[REDACTED]
Financial Close	[REDACTED]
Guaranteed Construction Start Date	[REDACTED]
Major Equipment procured	[REDACTED]
Delivery Network Upgrades completed	[REDACTED]
Initial Synchronization	[REDACTED]
Expected Commercial Operation Date	[REDACTED]
Guaranteed Commercial Operation Date	12/31/2030

Delivery Term: Twenty (20) Contract Years

Guaranteed Contract Capacity: 50 MW-AC at eight (8) hours of continuous discharge (the “**Resource Duration**”)

Dedicated Interconnection Capacity: 500 MW

Guaranteed Efficiency Rate: [REDACTED]

Minimum Efficiency Rate: [REDACTED]

Contract Price:

Contract Year	Contract Price
1 – 20	[REDACTED]

Product:

- Energy Settlement Revenue
- Capacity Attributes including Resource Adequacy Benefits

Scheduling Coordinator: Seller/Seller Third Party

Security Amount:

[REDACTED]

[REDACTED]

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RESOURCE ADEQUACY AND TB4 AGREEMENT

This Resource Adequacy and TB4 Agreement (“**Agreement**”) is entered into as of [REDACTED] (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

WHEREAS, Buyer is entering into the Agreement with the intention that the Facility will be counted toward the Project Participants’ Long Duration Storage obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions), the Mid-Term Reliability Obligations and other potential future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable; and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.7(e).

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an “Affiliate” for purposes of this Agreement.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Installed Capacity of the Facility, including spinning reserve, non-spinning reserve, regulation up, regulation down, and voltage support as each is defined in the CAISO Tariff.

“**Arbitrage Component**” has the meaning set forth in Exhibit C.

“**Availability Standards**” 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.

“**Bankrupt**” or “**Bankruptcy**” 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 and such appointment is not removed within ninety (90) days.

“**Business Day**” 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. Pacific Prevailing Time (PPT).

“**Buyer**” means California Community Power, a California joint powers authority.

“**Buyer Default**” means a failure by Buyer or its agents to perform Buyer’s obligations hereunder and includes an Event of Default of Buyer.

“**Buyer Liability Pass Through Agreement**” means the form set forth in Exhibit L.

“**Buyer’s Designees**” means the Project Participants or a Subsequent Purchaser.

“**Buyer’s Indemnified Parties**” has the meaning set forth in Section 16.1(a).

“**Buyer’s Share**” means the Guaranteed Contract Capacity as adjusted in accordance with Section 5 of Exhibit B divided by the Installed Capacity.

“**CAISO**” means the California Independent System Operator Corporation, or any successor entity performing similar functions.

“**CAISO Certification**” 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 Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, 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 Buyer’s Share of the Installed Capacity to provide reliability or 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 or used for any current or future compliance or reporting purpose including the Compliance Obligations and the Mid-Term Reliability Obligations. Capacity Attributes include Resource Adequacy Benefits, Imbalance Reserves, Reliability Capacity Up, and Reliability Capacity Down.

“**Capacity Commitments**” means written contracts that obligate Seller to deliver Capacity Attributes from the Facility to Persons other than Seller’s Affiliates over a period of time that includes the Delivery Term.¹

“**Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**Capacity Test**” or “**CT**” means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate or any other test conducted pursuant to Exhibit O.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**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, at least 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 tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**Charging Energy**” means the Energy delivered to the Facility from the CAISO Grid as measured at the Facility Meter Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable electrical losses and station use.

¹ To be discussed, unsure regarding Seller’s Affiliates

“**CIRA Tool**” means the CAISO Customer Interface for Resource Adequacy.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Capacity Test**” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Commercial Operation Date**” or “**COD**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means [REDACTED]

“**Compliance Actions**” has the meaning set forth in Section 3.7(c).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.7(b).

“**Compliance Obligation**” means the RAR, Local RAR, Flexible RAR, Mid Term Reliability Obligations and any other resource adequacy or capacity procurement requirements imposed on load serving entities by the CPUC, CAISO, WECC, or any other Governmental Authority having jurisdiction.

“**Compliant Project Participant**” means a Project Participant that is not a Defaulted Project Participant.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Delay Damages**” means [REDACTED]

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Capacity**” means the Effective Capacity multiplied by Buyer’s Share.

“**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 Non-Defaulting 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.

“**CPM Soft Offer Cap**” has the meaning set forth in the CAISO Tariff.

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

“**CPUC Master Resource Database**” means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy Benefits capacity to load serving entities.

“**CPUC System RA Penalty**” means the system RAR penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established 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, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.

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

“**Damage Payment**” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

“**Day-Ahead Market**” has the meaning set forth in the CAISO Tariff.

“**Dedicated Interconnection Capacity**” 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.

“**Defaulted Liability Share**” means the Liability Share of a Defaulted Project Participant.

“Defaulted Project Participant” means a Project Participant that has incurred but not cured a Project Participant Payment Default, including any Project Participant whose rights under the Project Participation Share Agreement have been suspended or terminated.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Delivered Storage RA” has the meaning set forth in Exhibit C.

“Delivery Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” 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.

“Development Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered from the Facility to the Delivery Point, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for station use and electrical losses to the Delivery Point.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for the number of hours of continuous discharge corresponding to the Resource Duration, 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 Capacity Test (including the Commercial Operation Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto).

“Efficiency Rate” means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Capacity Test, and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Emergency” means an event or condition in which continued operation of the Facility is reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property.

“**Emission Reduction Credits**” or “**ERCs**” 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 a 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.

“**Energy**” means alternating current electrical energy measured in MWh.

“**Energy Settlement Revenues**” means the sum of all Monthly Energy Settlement Amounts, calculated in accordance with Exhibit C.

“**Entitlement Share**” means a Project Participant’s share of the Contract Capacity as set forth in the Project Participant Share Agreement.

“**Environmental Cost**” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’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 Facility, (ii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iii) costs of permit maintenance fees and emission fees as applicable, (iv) the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, (v) the costs associated with the use, disposal, and clean-up of Hazardous Substances introduced to the Site, and (vi) the costs associated with decontamination or remediation, on or off the Site, necessitated by the maintenance, use, or release of such Hazardous Substances on the Site.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Expected Facility Capacity**” means 500 MW.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the 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 of this Agreement.

“**Facility Meter**” means a CAISO-approved meter, along with a 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 amount of Charging Energy delivered to the Facility Metering Point and the amount of Discharging Energy discharged from the Facility at the Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall

mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Facility Meter Point” means the location or locations of the Facility Meter.

“FERC” means the Federal Energy Regulatory Commission, or any successor government agency.

“Financial Close” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

“Flexible RAR” 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.

“Forced Labor” has the meaning set forth in Section 13.4(c).

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.

“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, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. 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., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“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*, “Governmental Authority” shall not in any event include any Party.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Amount**” has the meaning set forth in Exhibit L.

“**Guaranteed Commercial Operation Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Contract Capacity**” has the meaning set forth on the Cover Sheet as it may be adjusted pursuant to Section 5 of Exhibit B.

“**Guaranteed Efficiency Rate**” has the meaning set forth on the Cover Sheet.

“**Guaranteed Storage RA Amount**” has the meaning set forth in Exhibit C.

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

“**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.

“**Imbalance Reserves**” has the meaning set forth in the pending CAISO Tariff language available at <https://www.cao.com/documents/pendingtariff-language-dame-edam-tariff-amendment-er23-2686.pdf> and approved by FERC in Cal. Indep. Sys. Operator Corp., 185 FERC ¶ 61,210 (2023) (December 2023 Order).

“**Indemnified Party**” shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“**Indemnifying Party**” shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims,

demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“**Initial Liability Share**” means the Liability Share of each Project Participant shown on Exhibit S as of the Effective Date.

“**Initial Synchronization**” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“**Installed Capacity**” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for the number of hours of continuous discharge corresponding to the Resource Duration, as measured in MW AC at the Facility Meter Point by the Delivery Point (i.e., measured at the Facility Meter and adjusted for electrical losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Expected Facility 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, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interconnection Point**” means the point at which Seller’s Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Investment Grade Credit Rating**” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (a) 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 and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

“**Liability Share**” means the percentage amount set forth for each Project Participant in Exhibit S.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**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.

“**Long Duration Storage**” means a resource that meets the requirements of CPUC Decision 21-06-035 as of the Effective Date, including that such resource (a) is able to deliver the Guaranteed Contract Capacity for at least eight (8) hours, (b) is incremental to the CPUC’s baseline list, and (iii) is a Resource Adequacy Resource that is eligible to provide Resource Adequacy Benefits as set forth in the Resource Adequacy Rulings.

“**Losses**” means, with respect to Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this

Agreement, and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term.

“**Major Equipment**” means the items of equipment and machinery with purchase value higher than five million dollars (\$5,000,000) and/or have a delivery lead time exceeding twelve (12) months as set forth in Exhibit P.

“**Marketable Emission Trading Credits**” means emissions trading credits or units issued 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 (42 U.S.C. § 7651b (a) to (f)).

“**Material Permits**” means all permits required for Seller to commence construction, as set forth on Exhibit T.

“**Maximum Charging Capacity**” means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

“**Maximum Discharging Capacity**” means the highest level at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q.

“**Maximum State of Charge**” means the maximum State of Charge to which the Facility may be charged, as set forth in Exhibit Q.

“**Maximum Stored Energy Level**” means the maximum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

“**Mid-Term Reliability Obligations**” means the mandatory procurement obligations for incremental zero-emissions capacity pursuant to CPUC Decision 21-06-035 and CPUC Decision 23-02-040 as such decisions may be amended, supplemented, or revised.

“**Meter Service Agreement**” means “Meter Service Agreement for CAISO Metered Entities” or “Meter Service Agreement for Scheduling Coordinators”, as applicable, as each are defined in the CAISO Tariff.

“**Milestones**” means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.

“**Minimum Efficiency Rate**” means the percentage specified on the Cover Sheet.

“**Minimum State of Charge**” means the minimum State of Charge to which the Facility may be discharged, as set forth in Exhibit Q.

“**Minimum Stored Energy Level**” means the minimum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

“**Monthly Capacity Payment**” means the payment required to be made by Buyer to Seller each month commencing on the Commercial Operation Date and throughout the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

“**Monthly Energy Settlement Amount**” has the meaning set forth in Exhibit C.

“**Moody’s**” means Moody’s Investors Service, Inc.

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

“**MWh**” means megawatt-hours measured in alternating current, unless expressly stated in terms of direct current.

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

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrade**” means collectively Delivery Network Upgrades and Reliability Network Upgrades.

“**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, overnight courier service, or electronic messaging (e-mail) in accordance with Exhibit N.

“**Notification Deadline**” means twenty (20) Business Days before the relevant deadlines for the corresponding RA Compliance Showings applicable to the relevant Showing Month.

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“**Outage**” means a Planned Outage or Unplanned Outage.

“**Outage Schedule**” has the meaning set forth in Section 4.6(a)(i).

“**Participating Generator Agreement**” has the meaning set forth in the CAISO Tariff.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Payment Demand**” has the meaning set forth in Exhibit L.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means [REDACTED]

“**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 4.6(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.

“**Portfolio**” means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Financing**” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Prevailing Wage Requirement**” has the meaning set forth in Section 13.4(b).

“Pro Rata” means, for purposes of calculating a Project Participant’s Revised Liability Share, the ratio of (i) such Project Participant’s Initial Liability Share to (ii) the sum of the Initial Liability Shares of all of the Compliant Project Participants.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Project Labor Agreement” has the meaning set forth in Section 13.4(b).

“Project Participant” means each Person identified in Exhibit S that shall execute a Buyer Liability Pass Through Agreement in the form set forth in Exhibit L.

“Project Participant Approval” means each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement and the Project Participation Share Agreement, and that Buyer has delivered to Seller the Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by Buyer.

“Project Participant Payment Default” means any failure by a Project Participant to pay any material amount under the Project Participation Share Agreement as and when due (without giving effect to any extensions of time, waivers or late notices), including monthly amounts collected to fund, or to reserve funds for, payment of Buyer’s obligations under this Agreement.

“Project Participation Share Agreement” means that certain Willow Rock Project Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer’s responsibilities and liabilities under this Agreement, and any successor agreement.

“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.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“**RA Compliance Showing**” 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, 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 Component**” has the meaning set forth in Exhibit C.

“**RA Deficiency Amount**” has the meaning set forth in Exhibit C.

“**RA Guarantee Date**” means the Commercial Operation Date.

“**RA Substitute Capacity**” has the meaning set forth in the CAISO Tariff.

“**Ramp Rate**” means the ability of the Facility to change between power output levels, expressed in MW_{AC}/min.

“**Receiving Party**” has the meaning set forth in Section 18.2.

“**Reliability Capacity Down**” has the meaning set forth in the pending CAISO Tariff language available at <https://www.caiso.com/documents/pendingtariff/language-dame-edam-tariff-amendment-er23-2686.pdf> and approved by FERC in Cal. Indep. Sys. Operator Corp., 185 FERC ¶ 61,210 (2023) (December 2023 Order).

“**Reliability Capacity Up**” has the meaning set forth in the pending CAISO Tariff language available at <https://www.caiso.com/documents/pendingtariff/language-dame-edam-tariff-amendment-er23-2686.pdf> and approved by FERC in Cal. Indep. Sys. Operator Corp., 185 FERC ¶ 61,210 (2023) (December 2023 Order).

“**Reliability Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Remedial Action Plan**” has the meaning set forth in Section 2.4.

“**Replacement RA**” has the meaning set forth in Exhibit C.

“**Requested Confidential Information**” has the meaning set forth in Section 18.2.

“**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 RAR, Flexible RAR, and Local RAR, and any successor criteria applicable to the Facility, including any Resource Duration attributes.

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

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

“Resource Adequacy Rulings” means any applicable CPUC ruling or decision relating to resource adequacy, or any other resource adequacy Law, 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.

“Resource Duration” means the number of continuous hours of discharge as set forth on the Cover Sheet.

“Revised Liability Share” means the sum of a Project Participant’s Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares [REDACTED].

“S&P” means the Standard & Poor’s Financial Services LLC (a subsidiary of S&P Global Inc.) or its successor.

“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’s Indemnified Parties” has the meaning set forth in Section 16.1(b).

“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 shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages, unless such damages are part of a Party’s Gains, Losses or Costs as those terms are explicitly defined herein.

“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 Charging Energy and Discharging Energy to and from the Delivery Point to the Facility (which is excluded from Shared Facilities), including the Interconnection Agreement

itself, that are used in common with 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 the 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.

“**Shown Unit**” means the Facility or any unit providing Replacement RA specified by Seller in a Supply Plan.

“**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*, that 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 in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or its Affiliate): (a) owns or, until Commercial Operation, has the option to purchase the Site; (b) is the lessee or, until Commercial Operation, has the option to lease the Site; or (c) is the holder of an easement or, until Commercial Operation, an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**Slice-of-Day**” or “**SOD**” has the meaning set forth in the Resource Adequacy Rulings.

“**Slice-of-Day Capacity**” has the meaning set forth in Exhibit C.

“**State of Charge**” or “**SOC**” means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by the Resource Duration, expressed as a percentage.

“**Step-Up Event**” means the forty-fifth (45th) day following the occurrence of a Project Participant Payment Default if such Project Participant Payment Default has not been cured by that date, regardless of whether or not notice was given to the Defaulted Project Participant under the Project Participation Share Agreement or otherwise or by Buyer hereunder.

“**Storage RA Shortfall**” has the meaning set forth in Exhibit C.

“**Stored Energy Level**” means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

“**Subsequent Purchaser**” means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

“**Supplementary 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.

“**Tangible Net Worth**” 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.

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

“**Tax Credits**” means any (a) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in energy storage facilities and (b) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (a).

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Throughput**” means, at any point in time during any day or Contract Year, as applicable, the total cumulative amount of Discharging Energy from the Facility at such point in time during such day or Contract Year, as applicable (expressed in MWh).

“**Transmission Provider**” means any entity or entities transmitting or transporting the Charging Energy and Discharging Energy, as applicable, on behalf of Seller or Buyer to or from the Delivery Point but excluding Seller or any Seller’s Affiliate responsible for operating any generation line to any point of interconnection to a Transmission Provider’s transmission system or distribution system. For purposes of this Agreement, the Transmission Provider is set forth in Exhibit A.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Ultimate Parent**” means Hydrostor [REDACTED].

“**Unplanned Outage**” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof or pursuant to Section 4.7(c),, which period is not a Planned Outage.

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 shall mean 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 term 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, including Section 2.1(b) ("**Contract Term**"); *provided*, 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) Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within one hundred twenty (120) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party provided that such Notice is issued before Project Participant Approval occurs. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Development Security then held by Buyer, if any, less any amounts drawn in accordance with this Agreement.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 Commercial Operation; Conditions Precedent. Seller shall provide Notice to Buyer of the expected Commercial Operation Date, which shall occur on the first day of the applicable calendar month for RA Compliance Showing purposes, at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. Upon Buyer's approval (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date. If Buyer fails to respond within such five (5) Business Day period, Buyer shall be deemed to have approved Commercial Operation.

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date and demonstrating that the Installed Capacity is sufficient to provide no less Contract Capacity than ninety-five percent (95%) of the Guaranteed Contract Capacity (without giving effect to any adjustment pursuant to Section 5 of Exhibit B) to Buyer;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO have been executed and delivered and are in full force and effect, and a copy of each such agreement has been delivered to Buyer;

(c) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect, and a copy of the Interconnection Agreement has been delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has Site Control;

(f) Seller has obtained CAISO Certification for the Facility, and a copy of the CAISO Certification has been delivered to Buyer;

(g) Seller has obtained Full Capacity Deliverability Status and all Delivery Network Upgrades are complete such that Seller can deliver the Guaranteed Storage RA Amount;

(h) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(k) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Construction Delay Damages and Commercial Operation Delay Damages;

(l) Seller has taken all actions and executed all documents and instruments required to authorize Seller (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Seller (or its designated agent) is authorized to act as Scheduling Coordinator and has full capability to schedule and dispatch the Facility; and

(m) The Facility is shown on the CAISO and CPUC NQC lists and is able to be shown on Buyer's Designees' RA Compliance Showings as of the Commercial Operation Date.

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 agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, 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 misses a Milestone by more than [REDACTED], except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such [REDACTED] period following the missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in reasonable detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and to achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended pursuant to Exhibit B, *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 and except as provided in Section 11.1(b)(ii), 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; *provided*, in the event Seller misses any Milestone and Seller provides Notice to Buyer that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, as it may be extended pursuant to Exhibit B, then, unless such failure is the result of a Buyer Default, Buyer shall have the right to terminate this Agreement and retain the Development Security as liquidated damages. Such termination right must be exercised or reserved by Buyer in writing for due cause, if at all, within thirty (30) days after Buyer's receipt of Seller's Notice that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Exhibit B). Failure of Buyer to exercise or reserve its termination right within such deadline shall result in Buyer waiving its termination right until and unless Buyer has a termination right under this Agreement arising subsequent to such deadline.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during each day of the Delivery Term, Buyer shall have the exclusive right to the

Product associated with the Guaranteed Contract Capacity and the Contract Capacity. 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 or Capacity Attributes from any other resource or the market for delivery hereunder except as provided in Exhibit C, nor shall Seller sell, assign or otherwise transfer any Capacity Attributes associated with the Contract Capacity, or any portion thereof, to any third party other than to Buyer or Buyer's Designees or the CAISO pursuant to this Agreement or as otherwise required by Law.

3.2 **Sales Prior to Expected Commercial Operation Date.** If Seller is able to achieve Commercial Operation and commence producing Product prior to the Expected Commercial Operation Date, Seller shall provide Notice to Buyer at least ninety (90) days prior to the date that Seller anticipates commencement of production of Product ("**Early Commercial Operation Date**") and shall offer to sell Product to Buyer under the terms and conditions of this Agreement as of the Early Commercial Operation Date. If Buyer rejects or fails to respond to such offer within ten (10) Business Days of Seller's Notice under this Section 3.2, Seller may sell all Product and otherwise participate in any available markets without liability to Buyer until the Expected Commercial Operation Date. If Buyer accepts such offer, the Delivery Term shall commence as of the Early Commercial Operation Date.

3.3 **Capacity Attributes.** Seller has received Full Capacity Deliverability Status for the Facility for the Expected Facility Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Reliability Network Upgrades and/or Delivery Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility associated with the Contract Capacity.

(b) Throughout the Delivery Term, Seller shall maintain Full Capacity 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 to Buyer or Buyer's Designees in the amount of the Guaranteed Contract Capacity. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits relating to the Contract Capacity from the Facility to Buyer or Buyer's Designees unless otherwise directed by Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable Laws, including registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer or Buyer's Designees, to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement to allow (i) Buyer's or Buyer's Designees' rights to the Guaranteed Storage RA Amount of Product for the sole benefit of Buyer or Buyer's Designees and (ii) that Buyer or Buyer's Designees may use the Product to meet their Compliance Obligations. Such commercially reasonable actions shall include, without limitation, (1) 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 or the CPUC, including such documentation to

demonstrate that the Guaranteed Storage RA Amount can be delivered to the CAISO controlled grid for the Resource Duration, pursuant to the “deliverability” standards established by the CAISO or the CPUC, and (2) upon reasonable request of Buyer, providing additional information and documentation to Buyer to assist Buyer or Buyer’s Designees to meet compliance with regulatory agency requests and requirements to document that the Facility and the Capacity Attributes meet the requirements of all existing or future compliance programs administered by any regulatory agency to which Buyer is accountable. If necessary, the Parties further agree to negotiate in good faith to amend this Agreement to conform to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Authority to maintain the benefits of the Agreement.

3.4 **[Reserved]**.

3.5 **Resource Adequacy Failure**. For each month in which there is a Storage RA Shortfall, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages as calculated pursuant to Exhibit C, in each case, as the sole remedy for the Resource Adequacy Benefits Seller failed to convey to Buyer.

3.6 **Buyer’s Re-Sale of Product**. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; 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. 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, but without increasing Seller’s obligations or liabilities under this Agreement. 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.

3.7 **Compliance Expenditure Cap**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide Resource Adequacy Benefits associated with Buyer’s Share of the Installed Capacity to Buyer and the Project Participants that comply with the Resource Adequacy Rulings. The Parties acknowledge that Governmental Authorities, including the CPUC and CAISO, may undertake actions to implement changes in Law. Seller agrees, subject to the provisions of this Section 3.7, to use commercially reasonable efforts to take all Compliance Actions and to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller’s

rights, benefits, risks and/or obligations under this Agreement. If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to obtain, maintain, convey or effectuate Buyer's use of any Resource Adequacy Benefits, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at [REDACTED] ("**Compliance Expenditure Cap**").

(b) Any actions required for Seller to comply with its obligations set forth in Section 3.7(b), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(c) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(d) 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 (i) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (ii) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, 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 for any failure to take, these Compliance Actions for the remainder of the Contract Term.

(e) 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.

3.8 Change in Long Duration Storage Requirements. To the extent that the round-trip efficiency of the Facility in the CPUC Master Resource Database or other applicable basis that is used by the CPUC for the measurement of the shown Slice-of-Day Capacity is greater than the measured Efficiency Rate for a Showing Month, then for the purposes of (i) the calculation of the Slice of Day Capacity under Exhibit C; (ii) Section 4.3; and (iii) Section 11.1(b)(iv), the Efficiency Rate shall be deemed to be equal to the round-trip efficiency of the Facility as determined by the CPUC. If a change in Law occurs after the Effective Date that reduces the Project Participants' obligations with respect to charging sufficiency for resources with the same Resource Duration attributes, such that the revised regulatory performance requirements are less than the contractual performance requirements set forth herein, the Parties will meet and negotiate in good faith to amend this Agreement such that the contractual performance requirements parallel the regulatory performance requirements.

3.9 No Electrical Output. Neither the purchase of the Product nor receipt of the Energy Settlement Revenue confers to Buyer any right to the electrical output or Energy from the

Facility. Rather, the Product includes Buyer's Share of the Capacity Attributes and Resource Adequacy Benefits from the Installed Capacity and the Energy Settlement Revenue which confers the right for Buyer to receive payments regardless of whether the Facility is charged or discharged. Specifically, no Energy or Ancillary Services associated with the Facility are required to be made available to Buyer, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell any Capacity Attributes from the Facility other than those Capacity Attributes related to the Contract Capacity.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, during the Delivery Term, Seller shall supply and deliver the Product to Buyer, and Buyer shall take delivery of the Product in accordance with the terms of this Agreement. Delivery to and receipt by Buyer's Designees of Buyer's Share of the Resource Adequacy Benefits shall fulfill Seller's delivery obligations under this Section 4.1 of this Agreement. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the delivery of Product, any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations, transmission line losses, and Imbalance Energy charges. Seller shall provide Buyer or Buyer's Designees with the Guaranteed Storage RA Amount of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall deliver the Guaranteed Storage RA Amount by submitting, or causing each Shown Unit's Scheduling Coordinator to submit, Supply Plans to identify the characteristics of the Shown Unit and confirm the Capacity Attributes provided to the Buyer or Buyer's Designees for each Showing Month, with each Project Participant being allocated its Entitlement Share of the Guaranteed Storage RA Amount, unless specifically requested not to do so by Buyer.

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. Seller shall submit, or cause each Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the Capacity Attributes delivered to the Project Participants for each Showing Month of the Delivery Period.

(c) Seller shall identify the Shown Unit(s) and Guaranteed Storage RA Amount for a Showing Month by providing Buyer with the specific Shown Unit information set forth in Exhibit M no later than the Notification Deadline for such Showing Month.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Guaranteed Storage RA Amount for the Shown Unit(s) in any Showing Month, Seller and Buyer 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.

(e) The Resource Adequacy Benefits are 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 Guaranteed Storage RA Amount from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Resource Adequacy Benefits from the Shown Unit(s) by CAISO. Seller has failed to deliver the Resource Adequacy Benefits if (i) Buyer has elected to submit the Resource Adequacy Benefits from the Shown Unit(s) in the applicable 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 4.1(d) or (ii) Seller fails to submit the volume of Guaranteed Storage RA Amount for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Buyer and the Project Participants will have received the Guaranteed Storage RA Amount if Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month.

(f) Buyer is to receive and retain all revenues associated with the Guaranteed Storage RA Amount of Capacity Attributes during the Delivery Period, including any capacity and availability revenues from Imbalance Reserves, Reliability Capacity Up, and Reliability Capacity Down, or their successors. 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 Agreement.

(g) CAISO Requirements. During the Delivery Period, Seller shall comply with the CAISO Tariff and any Business Practice Manuals and shall perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the CAISO Tariff that are associated with the sale of the Product hereunder. Seller shall be solely responsible for any CAISO penalties, fines or costs related to this Agreement including those penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance with the CAISO Tariff or any Business Practice Manuals.

4.2 Interconnection. Seller shall be responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility. Throughout the Delivery Term, Seller shall provide under the Interconnection Agreement interconnection capacity and rights to the Facility of not less than the Dedicated Interconnection Capacity.

4.3 Efficiency Rate. During the Delivery Term, Seller shall use reasonable commercial efforts consistent with Prudent Operating Practices to cause the Facility to maintain an Efficiency Rate, calculated pursuant to a Capacity Test, of no less than the Guaranteed Efficiency Rate. If the Efficiency Rate during any twelve (12) month period is less than the Minimum Efficiency Rate, Buyer may terminate this Agreement pursuant to Section 11.1(b)(iv).

4.4 Capacity Test. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.

(a) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Seller shall notify Buyer no later than five (5) Business Days prior to any Capacity Test (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(b) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate of the Facility determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Capacity Test (not to exceed the Installed Capacity) 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, including compensation under Exhibit C, until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

4.5 **Resource Duration Augmentation.** At any time during the Term of this Agreement, Buyer may request augmentation of the Facility to increase the Resource Duration of the Guaranteed Contract Capacity to up to twelve (12) hours. Buyer shall provide Notice to Seller requesting such augmentation and Seller shall provide a good faith estimate of the cost and timing for such augmentation and the impacts on Facility operation during construction within forty-five (45) days after receipt of such Notice. Buyer shall provide Notice to Seller within thirty (30) days after receipt of Seller's estimate to (i) commence negotiations based on Seller's good faith estimate or (ii) decline to move forward with the augmentation. If Buyer wishes to commence negotiations, the Parties shall negotiate in good faith on necessary amendments to this Agreement. If the Parties fail to reach agreement on such amendments, neither Party shall have any further obligation under this Section 4.5; provided however, that Buyer may make one request for augmentation per Contract Year during the Term.

4.6 **Outages**

(a) **Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, use reasonable commercial efforts to accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.6(a)(i) and 4.6(b);

provided, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Buyer may provide comments no later than ten (10) days after receiving Seller’s Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer or Buyer’s Designees and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) No Planned Outages During Summer Months. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each May 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(c) Planned Outage Timing. To the extent commercially reasonable, Seller shall schedule maintenance Outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) RA Substitute Capacity. Seller shall provide RA Substitute Capacity as required by CAISO in connection with Facility outages. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Seller’s request for CAISO to approve such Facility outage. If Seller fails to provide RA Substitute Capacity, then Buyer may elect to not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan and such failure shall be deemed an “RA Shortfall” for the purpose of Section 3.5 and Exhibit C.

(e) Pro Rata Reductions. If an Outage of the Facility is only for a portion of the Effective Capacity of the Facility, Seller shall assign the reduction in deliveries of Product on no less than a pro rata basis to Buyer based on Buyer’s Share of the Effective Capacity.

4.7 **Reduction in Delivery Obligation**.

(a) Unplanned Outage. When Unplanned Outages of the Facility occur, Seller shall orally notify Buyer of the existence, nature, cause and expected duration of the Unplanned Outage as soon as practical by contacting Buyer by telephone and shall use reasonable commercial efforts to provide such notice within twenty-four (24) hours after the Unplanned Outage commences. Seller shall, in accordance with Prudent Operating Practice, inform Buyer of material changes in the expected duration of the Unplanned Outage. Seller shall be permitted to reduce deliveries of Product during any Unplanned Outage. Seller shall provide Buyer with Notice and expected duration of (if known) and plans to remediate any Unplanned Outage within five (5) Business Days of the occurrence of the Unplanned Outage.

(b) Force Majeure Event. Seller shall be permitted to reduce deliveries of RA Product during any Force Majeure Event.

(c) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety in the event of an Emergency², provided, however, that Seller's failure to deliver Product shall not be excused due to any Outage of the Facility due to an Emergency caused by Seller's negligence or willful misconduct.

ARTICLE 5 TAXES AND ENVIRONMENTAL COSTS

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. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If 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.

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

5.3 Environmental Costs. Seller shall be solely responsible for:

- (a) All Environmental Costs;
- (b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Energy used to charge the Facility or Energy discharged from the Facility;
- (c) Seller's obligations listed under "Compliance Obligation" in the GHG Regulations; and
- (d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other current or future federal, state or local legislation, regulations, decisions or other action to address, offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

² To be discussed: how are you thinking about System Emergency?

ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY

6.1 Maintenance of the Facility.

(a) Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the delivery and sale of Product, and the disposal and recycling of any equipment associated with the Facility.

(b) Seller shall maintain accurate records with respect to all Capacity Tests.

(c) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices.

(d) Seller shall use reasonable commercial efforts consistent with Prudent Operating Practices (i) to promptly make all necessary repairs to the Facility, and any portion thereof, and (ii) to take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Guaranteed Contract Capacity and the Guaranteed Efficiency Rate).

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions consistent with Prudent Operating Practices 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 disconnecting and removing all or a portion of the Facility or suspending the supply of Energy discharged from the Facility 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. Seller agrees that any agreements regarding Shared Facilities shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

ARTICLE 7 METERING

7.1 **Metering.** The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted,

modified or relocated.

7.2 **Meter Data**. Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer or Buyer's SC obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of Day-Ahead Market LMP data, Capacity Attributes transaction data, and Replacement RA delivered to Buyer (if any) sufficient to document and verify the amount of Product delivered by the Facility for the preceding month; and (b) 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. 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 and other information, all as may be necessary from time to time for Buyer to verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment**. Buyer shall make payments to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the 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 two percent (2%) not to exceed the maximum rate permitted by Law (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 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years following their creation or as otherwise required by Law. Upon fifteen (15) 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 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5 or (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate, 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 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 C, 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 and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment; provided, however, that the aggregate amounts of such replenishments shall not exceed the full amount of the Development Security. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter

of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

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 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

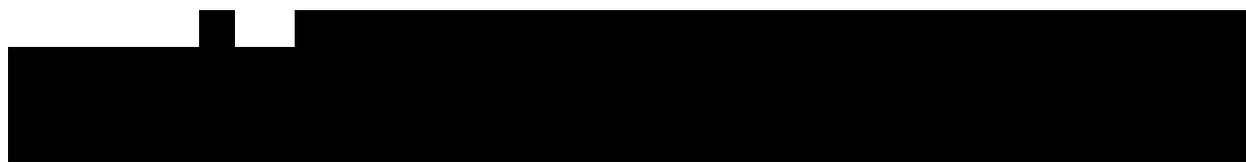
(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

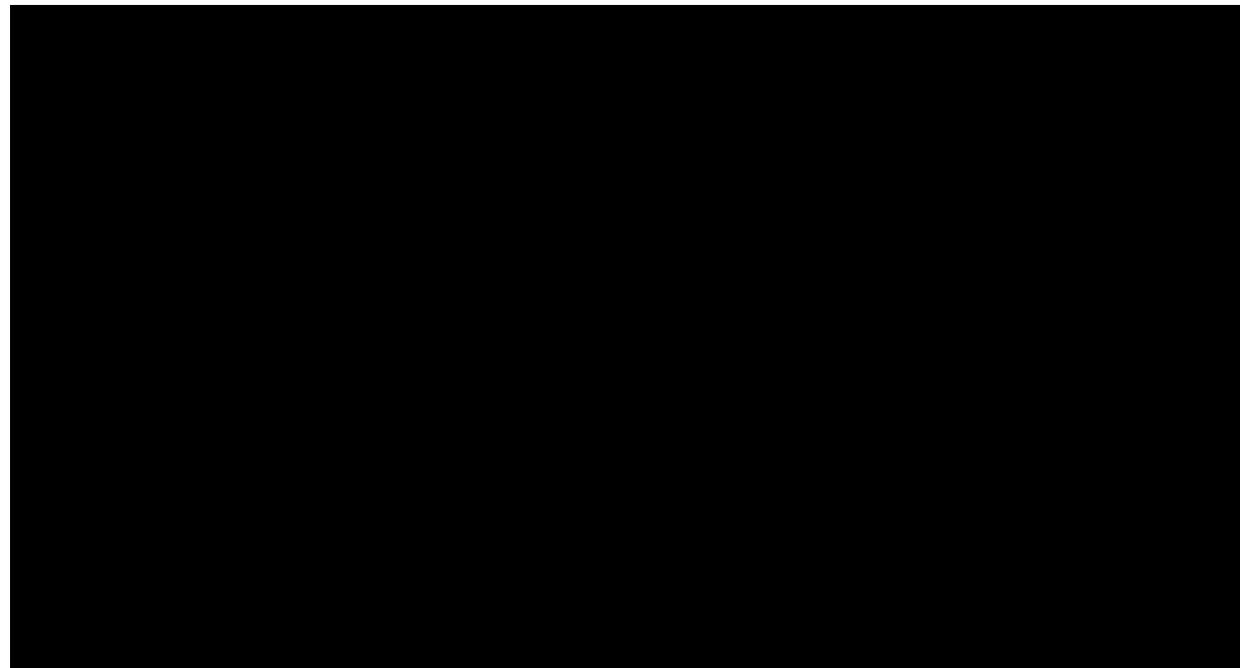
Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining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

8.10 **Buyer Credit Arrangements.**

(a) To secure its obligations under this Agreement, Buyer shall deliver to Seller, within one hundred twenty (120) days after the Effective Date, Buyer Liability Pass Through Agreements from the Project Participants with Liability Shares as set forth on Exhibit S. Seller shall countersign each Buyer Liability Pass Through Agreement within ten (10) days of receipt of Buyer's delivery of each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder. Buyer shall maintain such Buyer Liability Pass Through Agreements in full force and effect until both of the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of Buyer due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting).

(b) Buyer may propose amendments to Exhibit S, including with respect to the identity of Project Participants and the amount of each Project Participant's Liability Share. Seller shall have ten (10) Business Days to evaluate any such proposed amendments to Exhibit S in its sole but good faith discretion. If Seller approves such proposed amendments to Exhibit S, Buyer shall have sixty (60) days to provide Seller with replacement Buyer Liability Pass Through Agreements with Liability Shares executed by Buyer and the applicable Project Participants that incorporate the Liability Shares set forth in the amended Exhibit S. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder.





Following the occurrence of a Step-Up Event, Seller and Buyer will amend Exhibit S to set forth the Revised Liability Shares of the remaining Project Participants.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N 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 overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 p.m. PPT, on the next Business Day provided that in each case the sender does not receive a delivery failure notification; 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 commercially 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; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions 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 or compliance 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, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as a Development Cure Period under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Reliability

Network Upgrades, except to the extent expressly permitted as a Development Cure Period under this Agreement.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, 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. If a Force Majeure Event causes a partial Outage to the Facility, Seller shall assign the reduction in deliveries of Product on a pro rata basis to Buyer based on Buyer's Share of the Installed Capacity. Buyer shall not be obligated to make payments under this Agreement for any Product that is not delivered during 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 with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. 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. 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 Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

10.3 **Notice of Force Majeure Event.** Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely written notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(c) and 11.6, as applicable, and Buyer shall promptly

return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (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);

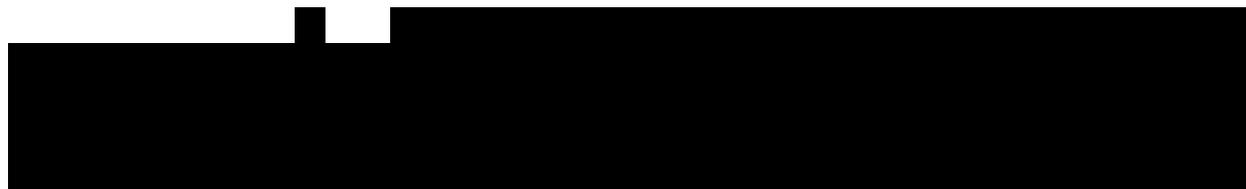
(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1, and except for failure to provide Resource Adequacy Benefits, the exclusive remedies for which are set forth in Exhibit C, 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) day period despite exercising best efforts);

(iv) such Party becomes Bankrupt;

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

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:



[REDACTED]

(d) to suspend performance; and

(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 monetary remedy for any Terminated Transaction and the Event of Default related thereto.

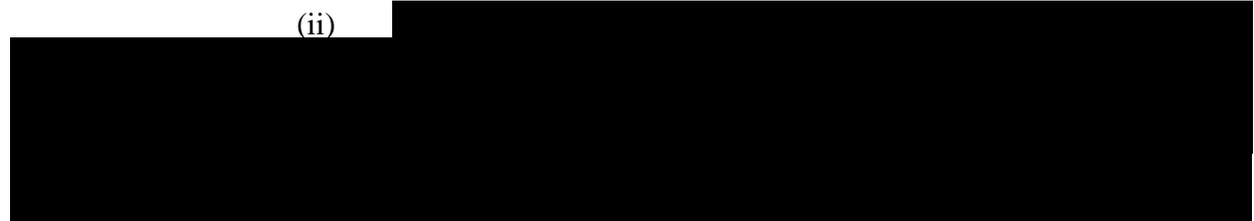
11.3 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date**. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i)

 The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine, that the damages set forth in this Section 11.3(a)(i) are liquidated damages and not a penalty, and are a reasonable approximation of Buyer's harm or loss.

(ii)

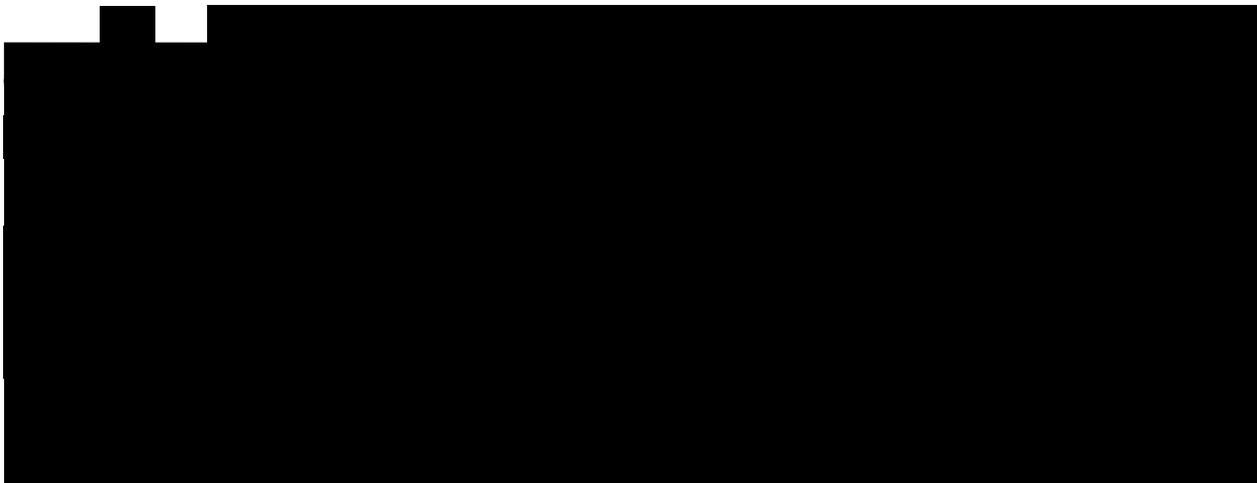
 The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are liquidated damages and not a penalty and are a reasonable approximation of Seller's harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date**. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party

(as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. 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 (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage 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 Termination Payment or Damage 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 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.



11.7 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.9 **Pass Through of Buyer Liability.** Notwithstanding any other provision of this Agreement, if Buyer fails 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, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Damage Payment or Termination Payment owed by Buyer that is not paid by Buyer pursuant to Sections 11.3 and 11.4, but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover accrued amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the Agreement as the result of an Event of Default by Buyer.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD-PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, 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. EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION FOR THIRD PARTY CLAIMS, SELLER’S AGGREGATE LIABILITY TO BUYER FOR ANY EVENT OF DEFAULT OR TERMINATION OCCURRING PRIOR TO THE COMMERCIAL OPERATION DATE, INCLUDING AMOUNTS PAID AS LIQUIDATED DAMAGES, SHALL NOT EXCEED THE TWO (2) TIMES THE DAMAGE PAYMENT.

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 CREDITS, 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 RECAPTURE OF TAX CREDITS, 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, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT C. 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 **Seller’s Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

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

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

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

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

(e) The Facility will be located in the State of California.

(f) Seller shall maintain Site Control throughout the Contract Term.

(g) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents, if applicable.

(h) As of the Effective Date, the Facility as designed is eligible to qualify as a Long Duration Storage resource.

(i) The Product is an incremental resource and includes the exclusive right of Buyer and Buyer's Designees, including the Project Participants, to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-03, as such Decision may be revised, updated or amended from time to time.

(j) Seller will provide additional information and documentation to Buyer if necessary to enable Project Participants to demonstrate that the Product meets the procurement mandates set forth in CPUC Decision 21-06-035.

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

(a) Buyer is a joint powers authority validly existing and in good standing under the laws of the State of California and is qualified to conduct business pursuant to its duly authorized Joint Powers Agreement. All Persons making up the governing body of Buyer are appointed in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (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 (California Government Code Section 810 *et seq.*).

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Seller's Covenants**. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) **Compliance with Laws**. To the extent applicable to Seller or the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

(b) **Workforce Development**. Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination and prevailing wage laws. Although the Facility is not a public work as defined by California Labor Code Section 1720, any construction work contracted by Seller in furtherance of this Agreement shall (i) comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in California Labor Code Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time ("**Prevailing Wage Requirement**"); and (ii) be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations ("**Project Labor Agreement**").

(c) **Prohibition Against Forced Labor**. Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below in this Article 14, neither Party may 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 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 to the same extent that Buyer's consent to an assignment is required, which consent shall not be unreasonably withheld, conditioned or delayed.³ Any 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. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment**. 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 a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

³ This addition is required to give full effect to Section 14.3(b). A transfer of the Agreement under Section 14.3(b) would almost certainly occur through a Change of Control.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a Bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default capable of being cured existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession

by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (California Government Code Section 81000 *et seq.*) or the regulations thereto, California Government Code Section 1090, or any other conflict of interest Law:

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(ii) Seller has provided Buyer with a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:

(i) The assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer.

(d) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any member of Buyer that (i) has a Credit Rating of at least BBB- from S&P and Baa3 from Moody's, and (ii) is a load serving entity; *provided*, Buyer shall give Seller Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests that provides that such Person will assume all of Buyer's obligations and liabilities under this Agreement upon such transfer or assignment. Notwithstanding the foregoing, any assignment by

Buyer, its successors or assigns under this Section 14.3(d) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.4 **Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller reasonably determines that the terms and conditions of such pre-payment arrangements are satisfactory to Seller and its Lenders and do not adversely affect Seller or its arrangements with Lenders in any respect and that Seller is reimbursed for all costs and expenses incurred by Seller and its Lenders in connection with such transaction.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law; Venue.** This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by Buyer and Seller, or in the absence of mutual agreement, the County of Sacramento.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall hold a meeting of executives (Vice President-level or above) to meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. 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 them at Law in or equity. The Parties shall cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful,

then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility and failure to comply with the CAISO Tariff, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

(b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Seller's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer's breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer, or (iii) negligent or willful misconduct of Buyer .

(c) Notwithstanding any other provision of this Agreement, Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury (including personal injury) or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the use, storage, release, disposal and transportation of Hazardous Substances, or the contamination of land, water, or air, including but not limited to the Site, with any Hazardous Substances resulting from or related to Seller's performance of this Agreement.

(d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting solely from its own negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an

indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) Workers' Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain, or cause to be maintained, at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's or Seller's contractors and subcontractors, as applicable, use

of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(e) Pollution Liability. 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 [REDACTED] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(f) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED]; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). 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) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to [REDACTED] of expected revenue from this Agreement.

(i) 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 with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in form evidencing all coverages set forth above. Such 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. The general liability, auto liability and workers' compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**”, whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.**

(a) The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s members, employees, lenders or investors, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, to support RA Compliance Showings or to otherwise show it has met its Compliance Obligations, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

(b) The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (California Government Code Section 7920 *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 Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

(c) 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 (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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 Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer 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, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer's Indemnified Parties from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

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 as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender, Indemnified Party and/or Project Participant.

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

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

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

19.9 **Binding Effect.** 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 (California Government Code Section 6500 *et seq.*) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as set forth in Section 11.9 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 8.10, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Dodd-Frank Act.** The Parties intend this Agreement to be 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). Notwithstanding the prior sentence, if and to the extent that this Agreement and the performance of the Parties' obligations requires any reporting to the Commodity Futures Exchange Commission (together with any successor body, the "**CFTC**") pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Seller shall be responsible for all such reporting (and Seller shall bear all costs and expenses associated therewith) and shall be the reporting counterparty for purposes of any applicable parts of the regulations of the CFTC promulgated under the Commodity Exchange Act. Buyer shall promptly provide information reasonably required by Seller for any such reporting and Seller shall be entitled to report and disclose information concerning all swaps transacted under this Agreement (including information regarding the economic terms and valuations of this Agreement) to any applicable Governmental Authority (or a third party swap data repository as required by a Governmental Authority), from time to time, to the extent required by any applicable Laws. Additionally, to the extent either Party needs additional information or details from the other Party in order to comply with any such applicable Laws (including information concerning such other Party's organization, corporate status, status under the CFTC's regulations and/or unique entity identifier), such other Party shall promptly provide such additional information or details to the first Party upon request. Buyer shall promptly reimburse Seller for any costs, fines or penalties Seller incurs as a result of Buyer's failure to comply with this Section 19.12. Seller shall promptly reimburse Buyer for any costs Buyer incurs as a result of Seller's failure to comply with this Section 19.12 and the Commodity Exchange Act, except to the extent such costs are a result of any action or omission of Buyer. Notwithstanding any provision of this Agreement to the contrary, no Event of Default, termination event, or other similar event shall be deemed to occur under this Agreement solely on the basis of a breach of any covenant or agreement in this Section 19.12 other than the obligation to make reimbursement payments.

19.13 **Further Assurances**. Each of the Parties hereto agrees 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 assumption 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.

19.14 **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.

GEM A-CAES LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

CALIFORNIA COMMUNITY POWER, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Willow Rock Energy Storage Center

Site includes all or some of the following APNs: [REDACTED]

County: Kern County, California

Zip Code: 93501

Latitude and Longitude: [REDACTED]

Facility Description: The Facility will be a net 500 MW / 4,000 MWh compressed air energy storage facility located in Kern County, California. The Facility will be connected to the grid through the SCE Whirlwind Substation via an approximately nineteen (19)-mile long 220 kV generation tie (gen-tie) line.

Lead Permitting Agency: California Energy Commission

CEQA Lead Agency: California Energy Commission

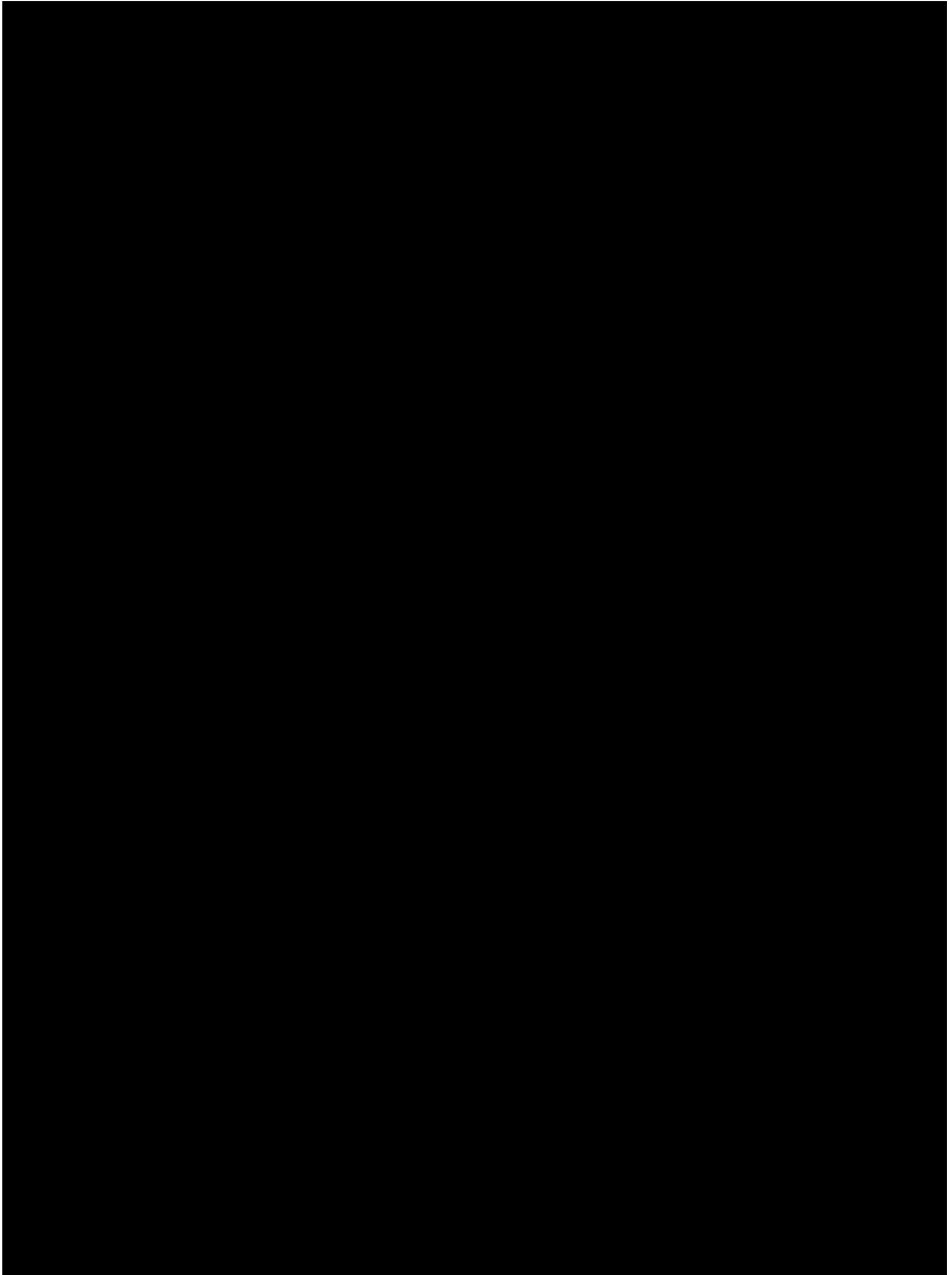
Interconnection Point: Whirlwind Substation

Delivery Point: PNode

PNode: [REDACTED]

Transmission Provider: Southern California Edison Company

Additional Information: Site Plan and Single Line Diagram current as of the Effective Date follow. These are subject to adjustment.



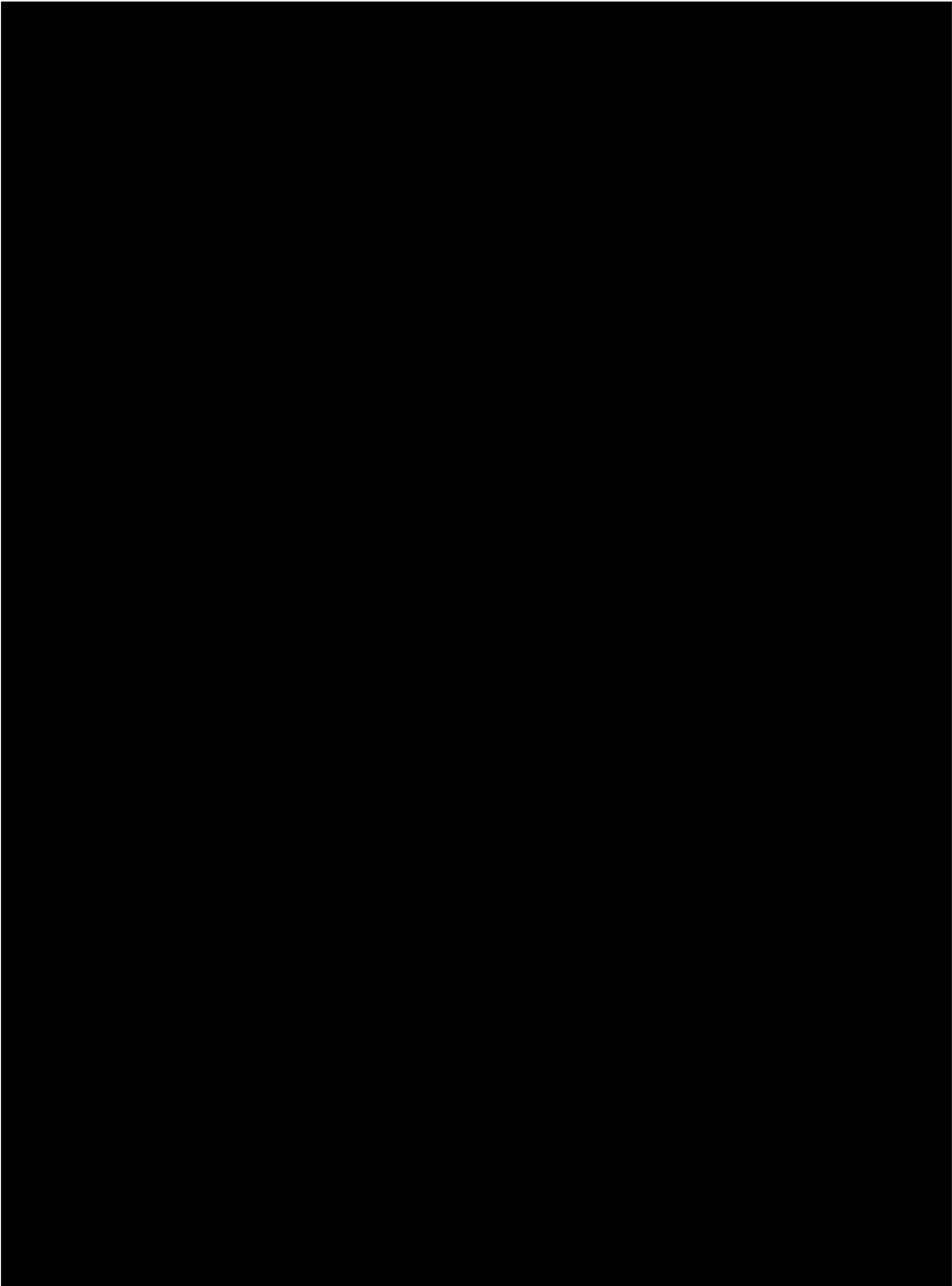


EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Construction of the Facility.

a. “**Construction Start**” will occur upon Seller’s acquisition of the conditional use permit and other applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) 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 shall be the “**Construction Start Date.**” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.

b. In addition to extensions pursuant to a Development Cure Period, Seller shall extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller extends the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] of extensions by such payment of Construction Delay Damages. If Seller extends the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of Exhibit B.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved in accordance with Section 2.2. The “**Commercial Operation Date**” shall be the later of [REDACTED].

- a. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period but not by the payment of Commercial Operation Delay Damages, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
 - b. In addition to extensions pursuant to a Development Cure Period, Seller shall extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller extends the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. If Seller extends the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b) of Exhibit B.
3. **Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation.** If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(i) and 11.2. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(i) and 11.2.
 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. a Force Majeure Event occurs; or



Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4.d above) shall not exceed [REDACTED], for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4.d above) shall not exceed [REDACTED] nor allow the Guaranteed Commercial Operation Date to extend beyond the Compliance Deadline. Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, or (ii) Seller failed to provide requested documentation as provided below. Except as set forth in Section 10.3 regarding Force Majeure Event notice requirements, Seller shall provide prompt written notice to Buyer of a Development Cure Period delay, but in no case more than ten (10) Business Days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed 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 commercially reasonable actions.

- 5. Failure to Reach Guaranteed Contract Capacity.** If, at Commercial Operation, the Installed Capacity of the Facility is such that Seller is unable to satisfy the total aggregate quantity of Capacity Commitments for the Facility, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is sufficient to satisfy the Facility's Capacity Commitments, including satisfying the Guaranteed Contract 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 increase the Installed Capacity by such date, Seller may elect to reduce the Guaranteed Contract Capacity [REDACTED] and identifying, in writing, the new adjusted Guaranteed Contract Capacity (the "**Adjusted Guaranteed Capacity**"). If Seller makes this election, then Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED]. Thereafter, the Guaranteed Contract Capacity

shall equal the Adjusted Guaranteed Capacity and applicable portions of the Agreement, including Exhibit Q, shall be adjusted accordingly.

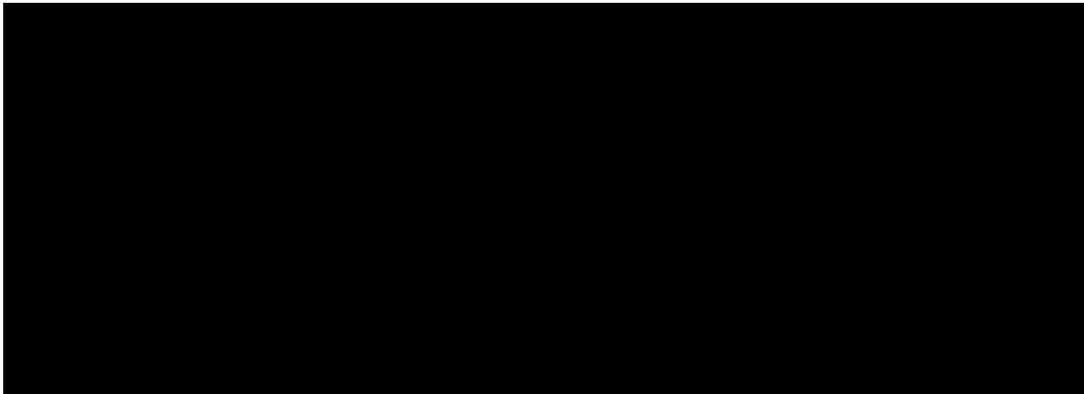
6. **Compliance Deadline**. The Parties acknowledge and agree that the CPUC has currently established a deadline of June 1, 2031, for Buyer to procure and commence operations of a contracted new long-duration energy storage (as such date may be extended by the CPUC, the “**Compliance Deadline**”). Notwithstanding Seller’s right to extend the Development Cure Period and the Guaranteed Commercial Operation Date, in the event that the Commercial Operation Date has not occurred by the Compliance Deadline, Buyer may terminate this Agreement and collect the Damage Payment on written notice to Seller issued prior to the Commercial Operation Date; provided, however, Buyer shall not be permitted to exercise this termination right if, prior to the Compliance Deadline, the CPUC has adopted mitigation or alternate compliance options that do not require the Project Participants to be deemed in non-compliance for satisfying Buyer’s obligation to procure long-duration energy storage, and Seller agrees in writing to reimburse Buyer for the costs or penalties associated with such mitigation or alternate compliance options. Any new Compliance Deadline determined by the CPUC shall be the Compliance Deadline for purposes of this Paragraph 6.

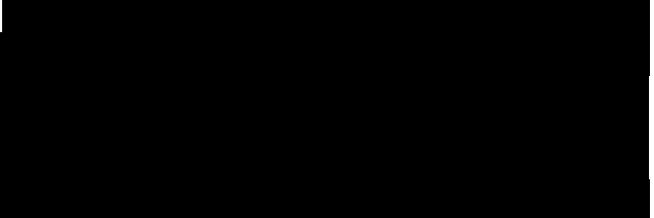
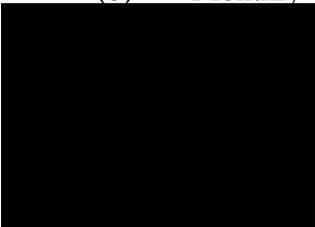
EXHIBIT C
COMPENSATION

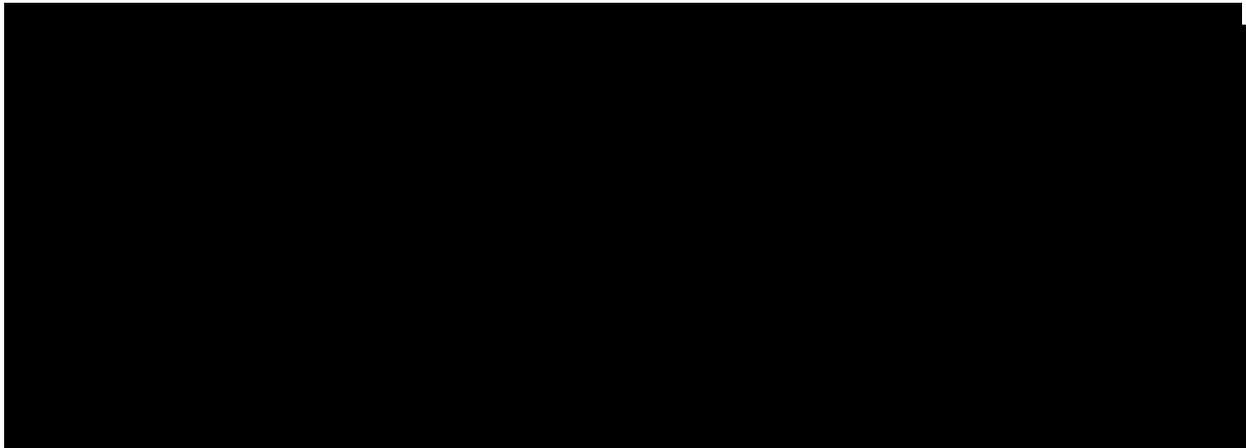
Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

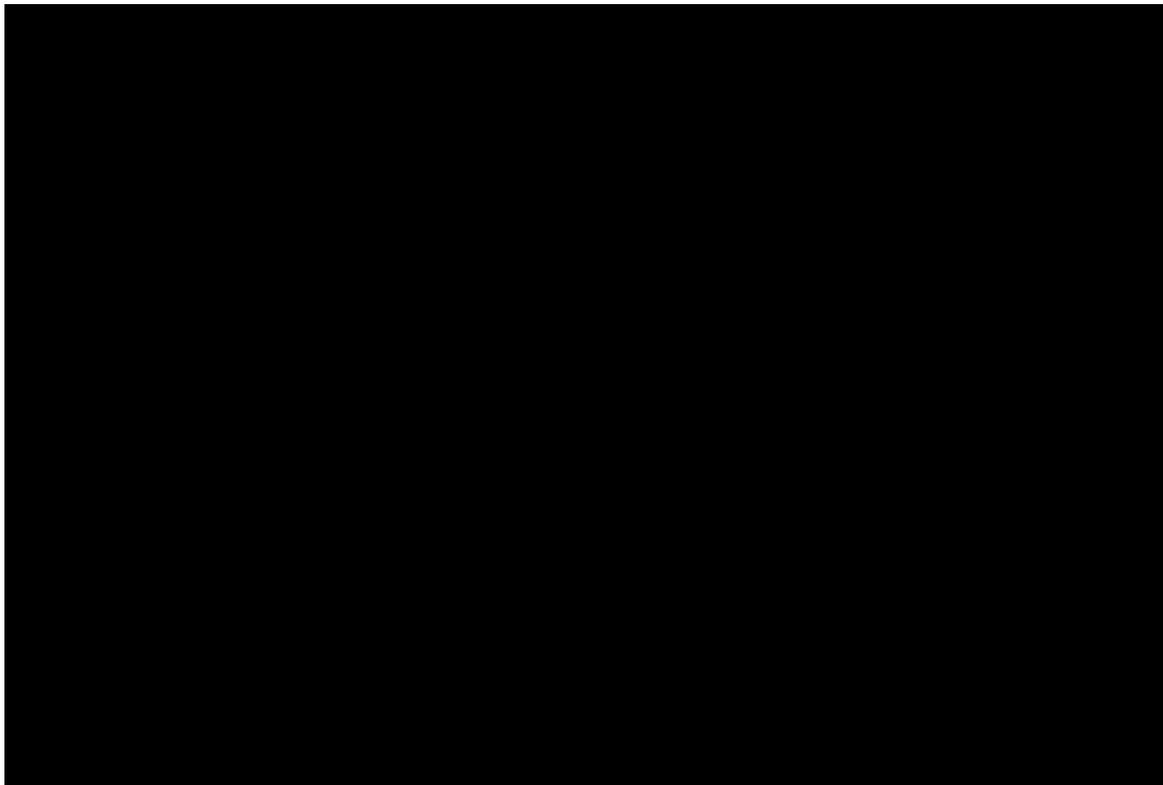
(a) Monthly Capacity Payment. Each month of the Delivery Term, Buyer shall pay Seller a Monthly Capacity Payment minus the Monthly Energy Settlement Amount for such month. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Contract Capacity and/or Efficiency Rate are adjusted pursuant to a 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 Contract Capacity and/or Efficiency Rate are applicable. The Monthly Capacity Payment shall be calculated as follows:

Monthly Capacity Payment = 



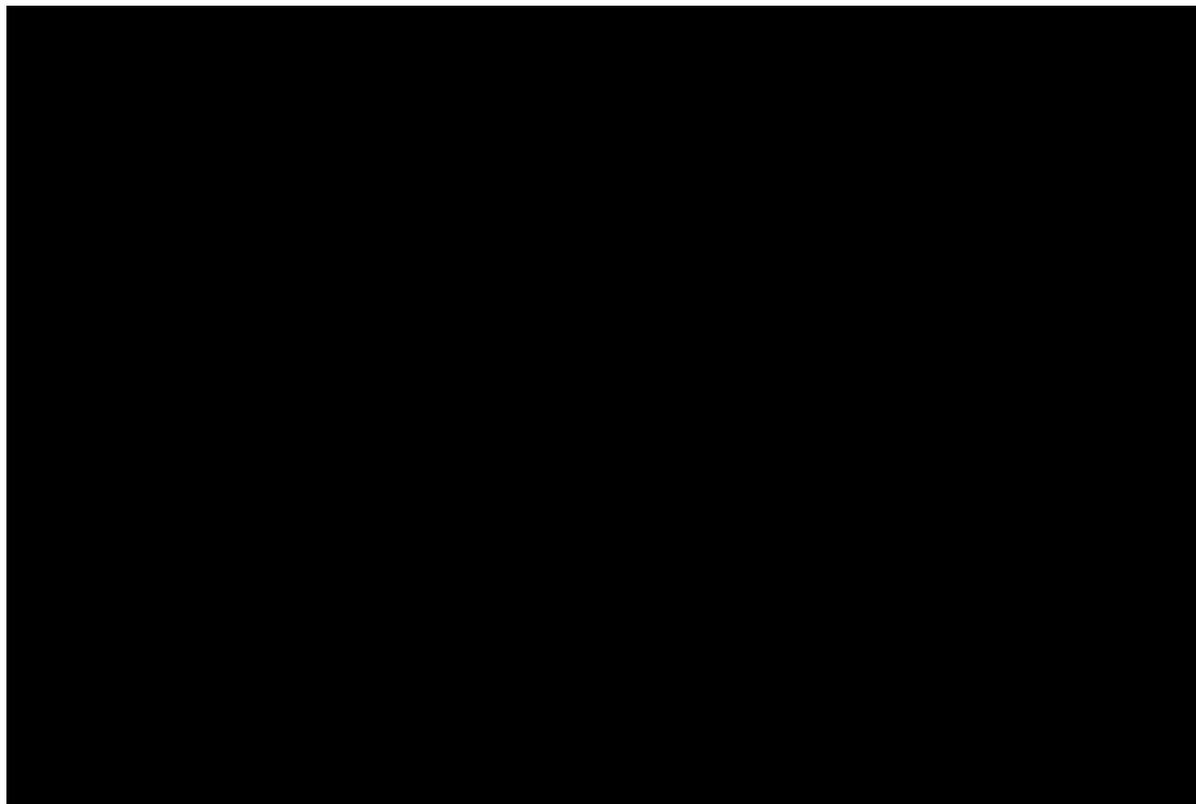
(b) Monthly Settlement Amount. 


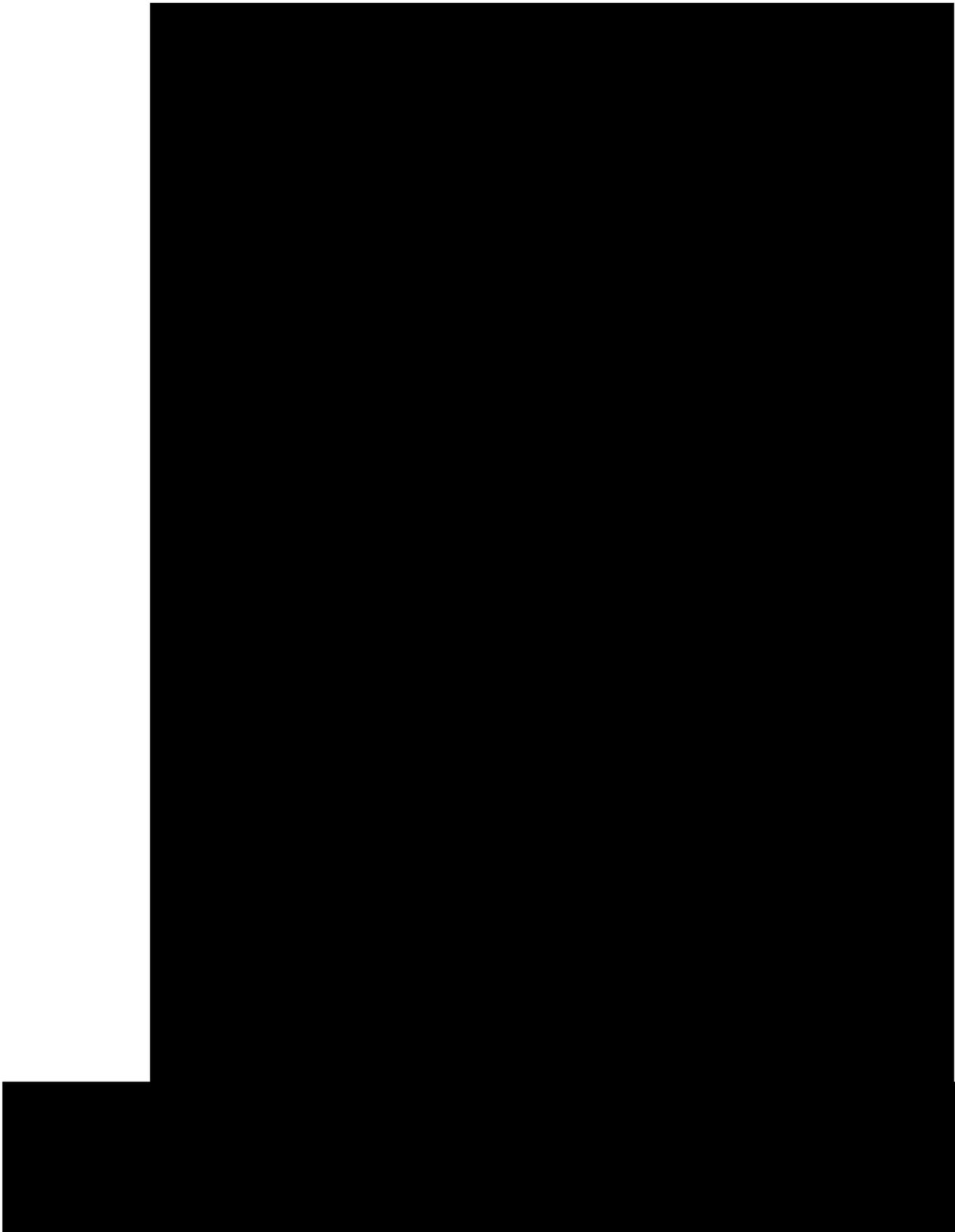


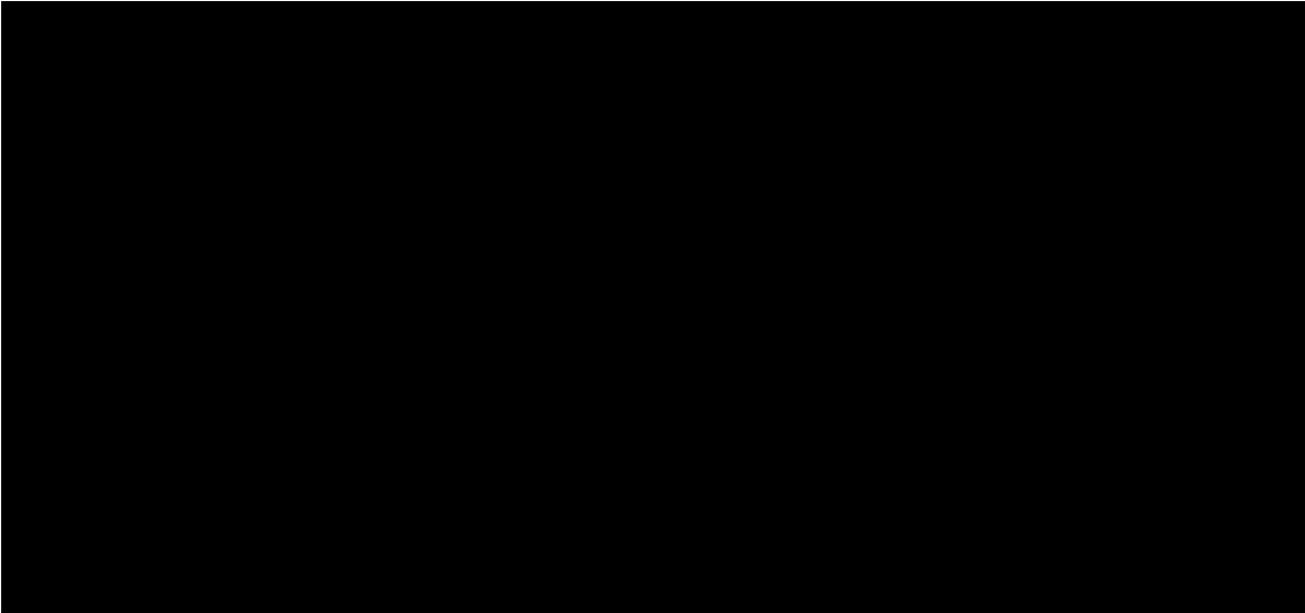


(c) RA Shortfall Damages Calculation.

The following definitions shall apply to this Exhibit C:







(d) Tax Credits.



(e) Effect of Force Majeure.



⁴ 

EXHIBIT D
[RESERVED]

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, including any OSHA labor hour reports.
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 reasonably likely to 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. A detailed description of all actions taken by Seller to comply with Prevailing Wage Requirement and Project Labor Agreement requirements of this Agreement.
12. Progress and schedule of all material agreements, contracts, permits (including Material 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. Workforce Development reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F
[RESERVED]

EXHIBIT G
[RESERVED]

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [*DATE*] (“**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. Seller has installed equipment for the Facility with an Installed Capacity sufficient to permit Seller to provide no less than [REDACTED] of the Guaranteed Contract Capacity (without giving effect to any adjustments pursuant to Section 5 of Exhibit B).
3. Seller has demonstrated that the actual Efficiency Rate is equal to or greater than the Minimum Efficiency Rate.⁵
4. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
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 on [*DATE*].
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [*DATE*].

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]
this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]
By: _____

⁵ Hydrostor is open to discussing requiring efficiency at COD to being in between the Minimum and the Guaranteed.

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and Efficiency Rate is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [*DATE*] (“**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.

I hereby certify the following:

(a) The Capacity Test conducted on [*DATE*] demonstrated a maximum dependable operating capability that can be sustained for [*Insert Resource Duration (#)*] consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Exhibit O (the “**Installed Storage Capacity**”); and

(b) The Capacity Test conducted on [*DATE*] demonstrated an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Exhibit O.

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [DATE] (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[REDACTED]



EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of California Community Power, [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (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 Resource Adequacy and TB4 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 [] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date_____

BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of [Effective Date] (the “**BLPTA Effective Date**”) by and between the [Member Name], a California [joint powers authority] (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and [Project Company Name], a [State] [form of incorporation] (together with its successors and permitted assigns “**Seller**”). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties.**”

ARTICLE 20 RECITALS

WHEREAS, CC Power and Seller have entered into that certain [Agreement Name] (as amended, restated or otherwise modified from time to time, the “**Offtake Agreement**”) dated as of [Offtake Agreement Effective Date];

WHEREAS, Project Participant is entering into this BLPTA to secure, in part, California Community Power’s obligations under the Offtake Agreement;

WHEREAS, Project Participant is named as a Project Participant under the Offtake Agreement and will derive substantial direct and indirect benefits from the execution and delivery of the Offtake Agreement;

WHEREAS, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

WHEREAS, initially capitalized terms used but not defined herein have the meaning set forth in the Offtake Agreement.

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 21 AGREEMENT

1. Project Participant Covenants. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of [Project Participation Entitlement Share]% (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the Offtake Agreement, including liabilities for Monthly Capacity Payments, the Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the Offtake Agreement, a

“Guaranteed Amount”). Any payment made directly from CC Power to Seller under the Offtake Agreement shall reduce Project Participant’s liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant’s Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the terms and conditions of the Offtake Agreement, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable, Project Participant shall promptly pay Project Participant’s Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver.** In consideration of the foregoing, Seller unconditionally waives:

a) all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the Offtake Agreement, but the foregoing waiver does not apply to any other right or remedy of Seller under the Offtake Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the Offtake Agreement or any other amounts incurred or accrued prior to termination of the Offtake Agreement and the right to terminate the Offtake Agreement as the result of an Event of Default by Buyer.

3. **Demand Notice.** For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the Offtake Agreement and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable. If CC Power fails to pay any amount when due pursuant to the Offtake Agreement, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant’s Liability Share of the unpaid Guaranteed Amount (a **“Payment Demand”**). A Payment Demand shall be in writing and shall reasonably specify (a) in what manner and what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant’s Liability Share of the unpaid Guaranteed Amount.

4. **Step-Up Events.** Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant’s Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer

Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit S to the Offtake Agreement will be deemed amended to reflect the Project Participant's Revised Liability Share; [REDACTED]

5. Scope and Duration of BLPTA. The obligations under this BLPTA are independent of the obligations of CC Power under the Offtake Agreement, and an action may be brought to enforce this BLPTA whether or not action is brought against CC Power under the Offtake Agreement. This BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the Offtake Agreement has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the Offtake Agreement are paid in full (whether directly or indirectly such as through set-off or netting) or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

- a) The extension of time for the payment of any Guaranteed Amount; or
- b) Any amendment, modification or other alteration of the Offtake Agreement; or
- c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or
- d) 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 CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the Offtake Agreement imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding; or
- e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
- f) The receipt, release, modification or waiver of, or failure to pursue or

seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or

g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the Offtake Agreement; or

h) 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 Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

6. Waivers by Project Participant. Project Participant hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against California Community Power under the Offtake Agreement or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the Offtake Agreement have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power or any other Person who has provided a BLPTA or other security or guaranty with respect to the Offtake Agreement now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the Offtake Agreement and waives any defense based on CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

7. Project Participant Representations and Warranties. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, 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 member of the

Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

8. Seller Representations and Warranties. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, 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 Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. California Community Power Representations and Warranties. California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, 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 member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

10. Notices. Notices under this BLPTA 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.

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 Seller:

[Seller Notice Provisions]

If delivered to Project Participant:

[Project Participant Notice Provisions]

If delivered to CC Power:

Attn: General Manager
California Community Power
901 H Street, Suite 120
PMB 157
Sacramento, CA 95814
Phone: 310-617-3441
amorris@cacommunitypower.org
with cc to: joshua.nelson@bbklaw.com

11. Governing Law and Forum Selection. This BLPTA 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 BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of Sacramento.

12. Miscellaneous. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA 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 BLPTA 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 BLPTA and all other provisions shall remain in full force and effect. This BLPTA 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 BLPTA 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.

13. Assignment. Except as provided below in this Paragraph 12, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the Offtake Agreement, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant's obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment.

14. No Recourse to Members of Project Participant. Project Participant 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. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. No Recourse to Members of CC Power. CC Power 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. Except as expressly set forth in the Offtake Agreement and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors,

consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

16. CleanPowerSF as Project Participant. Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

a) Designated Fund. CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("SFPUC") or the City and County of San Francisco or upon any non- CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco.

b) Controller Certification. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

c) Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

d) Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

e) Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by

reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

i) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

j) Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller’s operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or

state law.

k) Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

l) Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at anytime from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

m) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

17. City of San José (San José Clean Energy) as Project Participant. Paragraph 14 shall not apply if the City of San José, as administrator of San José Clean Energy ("**SJCE**") is the Project Participant, but the following shall apply:

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided, however,* that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(g) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[PROJECT PARTICIPANT],

a California **[joint powers authority]**

By: _____

Printed Name: _____

Title: _____

CALIFORNIA COMMUNITY POWER,

a California joint powers authority

By: _____

Printed Name: _____

Title: _____

[SELLER],

a **[State] [form of incorporation]**

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [**SELLER ENTITY**] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Resource Adequacy and TB4 Agreement dated [**DATE**] (“**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 3.3(d) 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		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

[*SELLER ENTITY*]

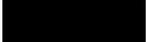
By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

GEM A-CAES LLC, a Delaware limited liability company (“Seller”)	California Community Power, a California joint powers authority (“Buyer”)
<p>All Notices:  </p>	<p>All Notices: Street: 901 H Street, Suite 120, PMB 157 City: Sacramento, CA 95814 Attn: Philippe Gerretsen, Director, Origination Phone: 858-353-8829 Email: pgerretsen@cacommunitypower.org With cc to: Joshua.Nelson@bbklaw.com and mburgunder@cacommunitypower.org</p>
<p>Reference Numbers: Duns:  Federal Tax ID Number: </p>	<p>Reference Numbers: Duns: Federal Tax ID Number: 86-2231483</p>
<p>Invoices: </p>	<p>Invoices: Attn: Maher Accounting Phone: 415-526-3020 Email: mmaher@mahercpa.com With cc to: mburgunder@cacommunitypower.org</p>
<p>Scheduling: </p>	<p>Scheduling: Attn: Jack Schaufler Phone: 919-259-0677 Email: jschaufler@cacommunitypower.org</p>
<p>Confirmations: </p>	<p>Confirmations: Attn: Jack Schaufler Phone: 919-259-0677 Email: jschaufler@cacommunitypower.org</p>
<p>Payments: </p>	<p>Payments: Attn: Maher Accounting Phone: 415-526-3020 Email: mmaher@mahercpa.com</p>
<p>Wire Transfer: </p>	<p>Wire Transfer: </p>

GEM A-CAES LLC, a Delaware limited liability company (“Seller”)	California Community Power, a California joint powers authority (“Buyer”)
With additional Notices of an Event of Default to: [REDACTED]	With additional Notices of an Event of Default to: Attn: Joshua Nelson, Partner Best Best & Krieger LLP 500 Capitol Mall, Suite 2500 Sacramento, CA 95814 Phone: 916-551-2859 Email: joshua.nelson@bbklaw.com
Additional notices of an Event of Default to: [REDACTED]	With Additional Notice of an Event of Default to: Attn: Alexander Morris, General Manager Street: 901 H Street, Suite 120, PMB 157 City: Sacramento, CA 95814 Phone: 310-617-3441 Email: amorris@cacommunitypower.org
Emergency Contact: [REDACTED]	Emergency Contact: Attn: Philippe Gerretsen, Director, Origination Phone: 858-353-8829 Email: pgerretsen@cacommunitypower.org

EXHIBIT O

CAPACITY TESTS

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days' prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the initial Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and efficiency rate of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, Buyer may request an additional Capacity Test once in each Contract Year. Upon no less than ten (10) Business Days after receipt of Notice from Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the 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 Capacity Test upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). The Parties shall use reasonable commercial efforts to perform no more Capacity Tests than are reasonably necessary and to coordinate Capacity Tests with Capacity Tests being performed in connection with other contracts to which the Facility is subject.

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than ten (10) Business Days following any 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 of the Agreement, the actual Efficiency Rate and Effective Capacity determined pursuant to a Capacity Test (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such 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.

Capacity Test Procedures

PART I. GENERAL.

- A. Each 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 Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. Conditions Prior to Testing.
- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Storage Management System (SMS), 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) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between CAISO'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 CAISO's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. 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.

⁶

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Expected Facility Capacity; provided, for all purposes of this Agreement, the amount of Buyer's Share of the Installed Capacity shall never be deemed to exceed the Guaranteed Contract Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Buyer's Share of the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Contract Capacity.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, 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 CT will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such CT, if applicable, will be made in accordance with this Exhibit O.
 - (1) The measurement of Charging Energy, as measured by the Facility Meter, that is required to charge the Facility from the Minimum Stored Energy Level up to the Maximum Stored Energy Level.
 - (2) The measurement of Discharging Energy, as measured by the Facility Meter, that is required to discharge the Facility from the Maximum Stored Energy Level down to the Minimum Stored Energy Level.
 - (3) Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity.

⁶ Section B allows for subsequent capacity tests at Seller's election

- (4) Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity.
- B. Parameters. During each CT, 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 measured by the Facility Meters (MWh) (i.e., to each measurement device making up the Facility Meter);
 - (3) The amount of Charging Energy measured by the Facility Meters (MWh) (i.e., from each measurement device making up the Facility Meter); and
 - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, 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) near the horizontal centerline of the Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The Maximum Discharging Capacity sustained for the number of consecutive hours corresponding to the Resource Duration;
 - (3) The Maximum Charging Capacity sustained for the number of consecutive hours equal to the Resource Duration divided by the Minimum Efficiency Rate (or such lesser time as is required to reach 100% SOC);
 - (4) Amount of time between the Facility's electrical output going from 0 to the Maximum Discharging Capacity registered during the CT (for purposes of calculating the Ramp Rate);
 - (5) Amount of time between the Facility's electrical input going from 0 to the Maximum Charging Capacity registered during the CT (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; and

- (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, 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) Abnormal Conditions. If abnormal operating conditions prevent the testing or recordation of any required parameter during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. 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. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within ten (10) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT 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 CT or Seller's rejection of the CT results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefore. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to Construction Start, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility (“**Supplementary Capacity Test Protocol**”). 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of the Discharging Energy delivered to the Delivery Point (expressed in MWh AC) at the Maximum Discharging Capacity during the first Resource Duration number of hours of discharge (up to, but not in excess of, the product of (i) the Expected Facility Capacity as of the Effective Date, multiplied by (ii) the Resource Duration) shall be divided by the Resource Duration number of 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(b) 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.
- J. Partial Capacity Tests. To the extent that a Capacity Test is being performed solely for Buyer that is not part of a Capacity Test applicable to the full Facility, the Parties will cooperate, acting reasonably and in good faith, to adjust the requirements and calculations to reflect testing of at least Buyer’s share of the Installed Capacity.⁷

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.

⁷ Parties to discuss.

- (3) Command a real power charge that results in an AC power of Facility's Maximum Charging Capacity and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) the number of hours equal to the Resource Duration divided by the Minimum Efficiency 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) number of hours equal to the Resource Duration divided by the Minimum Efficiency 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 an agreed-upon rest period, command a real power discharge that results in an AC power output of the Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the Maximum Discharging Capacity for the number of consecutive hours corresponding to the Resource Duration, or (b) the Facility has reached 0% SOC.
 - (7) Record and store the SOC and Discharging Energy after the number of hours corresponding to the Resource Duration of continuous discharging.
 - (8) If the Facility has not reached 0% SOC pursuant to Section III.A(6), continue discharging the Facility at Maximum Discharging Capacity until it reaches a 0% SOC.
 - (9) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Section III.A(6) until the Facility has reached a 0% SOC pursuant to either Section III.A(7) or Section III.A(8), as applicable.
- Test Results:
 - (1) The resulting Effective Capacity measurement is the sum of the total of Discharging Energy as reported under Section III.A(7) above at the Facility Meter divided by the Resource Duration, not to exceed the Expected Facility Capacity.
 - (2) The total amount of Discharging Energy (as reported under Section III.A(9) above) divided by 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.

EXHIBIT P
MAJOR EQUIPMENT

Owner-Furnished Equipment

- o Turbomachinery
- o Shell and Tube Heat Exchangers

Electrical and I&C

- o Electrical Enclosures
- o GSU Transformers
- o Main Auxiliary Transformers
- o Generator Circuit Breaker
- o Compressor Transformers
- o Emergency Diesel Generator
- o Iso Phase Bus Duct
- o Battery/UPS System
- o Distributed Control System

Mechanical

- o Air Cooled Heat Exchangers
- o Compressed Air System
- o Oil Water Separators
- o HP Air Trim Cooler
- o Fire Pumps
- o General Service Pumps
- o Fire Protection
- o Cold Thermal Fluid Pumps
- o Shop Fabricated Tanks

- o Field Erected Tanks (Cylindrical and Spherical)
- o Nitrogen Generation
- o Piping
- o Expansion Joints
- o Silencers
- o Generation Conduit Gate Valve
- o Butterfly Valves
- o Sanitary Waste Tank

Structural

- o Building
- o Structural Steel

Substation

- o HV Breakers
- o Structures/Equipment
- o Relay Panels

Bulks

Transmission

- o Steel Structures
- o Conductors

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and 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, and (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q.

File Update Date:	[TBD]
Technology:	Advanced Compressed Air Energy Storage (“A-CAES”) Technology
Storage Unit Name:	Willow Rock Energy Storage Center
A. Contract Capacity	
Expected Facility Capacity (MW):	500
Guaranteed Contract Capacity (MW):	50
Contract Capacity (MW)	[TBD]
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV):	220 kV
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Maximum Stored Energy Level (MWh):	4,000 MWh
Minimum Stored Energy Level (MWh):	0 MWh
Maximum Charging Capacity (MW):	500 MW
Maximum Discharging Capacity (MW):	500 MW
C. Maximum Throughput	
Maximum Daily Throughput:	4,000 MWh
Maximum Annual Throughput:	1,460,000 MWh
D. Charge and Discharge Rates	
	Ramp Rate (MW/minute) Description
Energy:	[REDACTED]
E. Ancillary Services	
Spinning reserve is included:	No
Non-spinning reserve is included:	No
Regulation up is included:	No
Regulation down is included:	No
Black start is included:	No
F. Other Services	
Voltage support is included:	No

EXHIBIT R
[RESERVED]

EXHIBIT S

PROJECT PARTICIPANTS AND LIABILITY SHARES

Project Participant	Liability Share
CleanPowerSF (CPSF)	23.00%
Peninsula Clean Energy (PCE)	30.00%
Redwood Coast Energy Authority (RCEA)	6.20%
San Jose Clean Energy (SJCE)	24.00%
Silicon Valley Clean Energy Authority (SVCE)	11.40%
Valley Clean Energy Authority (VCE)	5.40%
Total	100.00%

EXHIBIT T





Staff Report – Item 5

Item 5: Adopt Resolution to Establish EV Rate Pilot Program

From: Monica Padilla, CEO

Prepared by: Justin Zagunis, Director of Customer Success
 Rebecca Fang, Manager of Data and Analytics
 Michaela Pippin, Communications Manager
 Peter Mustacich, Technical Manager of Decarbonization Planning and Strategy

Date: 1/14/2026

RECOMMENDATION

Staff recommends the Silicon Valley Clean Energy (SVCE) Board of Directors (“Board”) adopt Resolution 2026-03 to establish the “EV Rate Pilot Program” with a budget of \$1.5M to better understand SVCE’s ability to align home charging with lower daytime grid emissions through Time-of-Use (TOU) rate structure design.

BACKGROUND

SVCE has been actively supporting electric vehicle (EV) owners through customer programs since 2020 with the launch of the GridShift app, designed to save customers money on home charging by automatically aligning charging with times of lowest electricity rates. In 2023 SVCE launched a rate pilot program, the SVCE E-ELEC rate, designed to incentivize shifting home energy usage to Off-Peak TOU periods. While intended to support home electrification, the SVCE E-ELEC rate pilot program saw especially high enrollment from EV owners before the pilot ended in Fall of 2025. After five years of implementation, SVCE is now phasing out the GridShift program, but leveraging the lessons learned from both GridShift and the SVCE E-ELEC rate pilot program to inform the development of a new SVCE EV Rate Pilot Program designed to incentivize daytime charging to align with periods of lowest grid emissions. The SVCE EV Rate Pilot Program design and goals are described in further detail in this staff report, as well as an update on the GridShift program.

GridShift: EV Charging Program

Ev.energy was selected through SVCE’s fall 2019 application round for the Innovation Onramp program that focused on mobility. The pilot was to demonstrate the value and viability of a mobile application (app) based customer offering to facilitate smart EV charging to lower costs and emissions. SVCE branded the pilot as “GridShift: EV Charging” for customers. To participate in the pilot, customers downloaded the SVCE-branded app, connected their vehicles, and set preferences (e.g. that the vehicle must be fully charged by 7AM every day). Then, the ev.energy platform automatically optimized their charging to minimize retail electricity bills and reduce grid emissions.

The pilot agreement was executed in May 2020 and ran until July 2021 with a final cost of \$95,500 over two fiscal years.

Staff subsequently carried out an informal bid process for the scaled-up GridShift: EV Charging program, to assess the current capabilities of competitors and ensure competitive pricing. Based on experience from the pilot as well as the results from the informal bid process, ev.energy was selected again. The three-year agreement was executed in May 2021 and extended for an additional year in April 2024 for a total cost not to

exceed \$650,000. This enabled SVCE to continue providing managed EV charging services to SVCE customers and to address key points of survey feedback through improved communications and streamlining the customer experience.

Starting in spring 2024, SVCE partnered with ev.energy to scope and test dynamic pricing via the ChargeWise dynamic grid signals pilot. This work was partially funded by the California Energy Commission (CEC) Responsive, Easy Charging Products with Dynamic Signals (REDWDS) grant. Dynamic pricing, also referred to as real-time or hourly pricing, has the potential to better convey the hourly costs of energy consumption to customers throughout the day – and if EV charging can respond to this signal, it will help reduce the overall system cost of serving this load. The ChargeWise pilot, deployed through SVCE’s existing GridShift: EV Charging app, allowed SVCE to learn more about the effectiveness of these new rates as a mechanism to reduce procurement and customer costs in the long run. To enable SVCE to run the one-year pilot and analyze pilot results, the ev.energy agreement was extended through December 2025.

As the GridShift: EV Charging Pilot Program closes, staff recognize the growing number of EV owners in the region and the value in keeping these customers engaged with SVCE offers and services. Additionally, significant emissions reduction opportunity was observed for shifting overnight charging to daytime hours when grid emissions are lowest. These key learnings, combined with learnings from the E-ELEC 1.0 Rate Pilot Program (described below), led to the development of the EV Rate Pilot Program presented to the Board for adoption.

EV Pilot Rate Program

In December of 2022, the SVCE Board established by Resolution No. 2022-38 the E-ELEC residential rate mirroring PG&E’s new rate established December 1, 2022. Qualification for the E-ELEC rate included owning and operating a heat pump space or water heater, an energy storage system (ESS), and/or an electric vehicle. The E-ELEC rate follows a TOU structure similar to the EV-2A rate, which includes a daily schedule of Peak (4-9pm), Partial-Peak (3-4pm and 9pm-12am), and Off-Peak (12am-3pm) TOU periods. At that time the SVCE Board approved \$9.5M for an electrification discount, referred to in this report as the “E-ELEC 1.0 Rate Pilot Program”. The E-ELEC 1.0 Rate Pilot Program was intended to support decarbonization of existing homes by reducing potential on-bill impacts of electrifying major gas-fired appliances. The vast majority of the budget for this rate pilot program went towards strategically offering a deeper discount during the daily Off-Peak TOU period (12am-3pm) to help lower customer bills and incentivize behavior change to reduce Peak energy consumption.

After two years of the E-ELEC 1.0 Rate Pilot program, staff recommended a program design update based on pilot findings, specifically that the majority of enrolled customers (over 80%) were EV owners rather than heat pump owners as originally intended. In May 2025, the Board authorized the termination of E-ELEC 1.0 Rate Pilot program and established the E-ELEC 2.0 Rate Pilot program (with a budget of \$3.5M) through the adoption of Resolution No. 2025-12, with a goal of better meeting the original pilot program objectives:

- 1) To reduce bill impacts of home electrification, and
- 2) To incentivize behavior-driven load shifting to periods of lower grid emissions

The E-ELEC 2.0 Rate Pilot Program included two significant design changes: first, it requires customers own both space and water heating heat pump technology to qualify for participation; and second, it introduced a new time-of-use period, referred to as “Super-Off-Peak”, between 9am and 3pm daily. The rate design aligns the largest customer discount (i.e., lowest pricing) with the Super-Off-Peak period as this aligns with the lowest emission hours for the California grid.

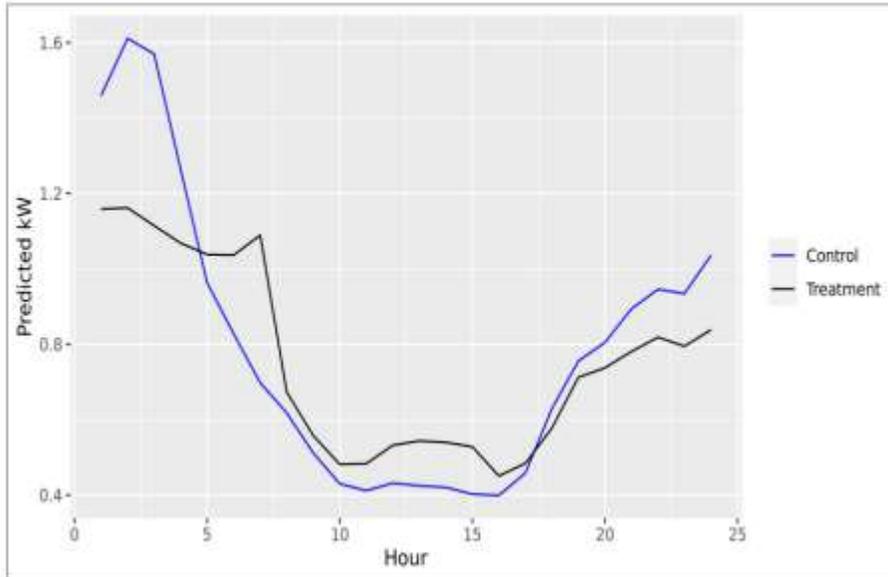
When staff presented the updated E-ELEC 2.0 Rate Pilot Program to the Board in May 2025, the Board expressed interest in staff exploring similar options for EV owners.

ANALYSIS & DISCUSSION

GridShift: EV Charging Program

A key consideration of expanding and extending GridShift, after the years of learnings and assessments and testing, was whether it made financial sense to continue to scale this offer to customers. Results showed that the app was successful in shifting additional EV charging load to off-peak (including daytime) hours, flattening the 12AM charging peak, and reducing hourly emissions associated with EV charging.

Figure 2-5 Annualized Load Shape for Treatment 1 (Steady State)



But a scalable contract was needed to ensure that each EV enrolled by SVCE would provide a similar level of value as the cost required to support that customer – that is, growing from 1,500 to 15,000 EVs would incur significant new cost and it needed to make sense for SVCE to pursue.

In July 2025, in anticipation of the end of the ev.energy agreement, Staff carried out a solicitation to assess options to continue the GridShift: EV Charging program beyond 2025. In its evaluation of the ten proposals submitted, staff determined that, per EV enrolled in the program, the cost was not commensurate with the value. Staff made the decision not to pursue a new agreement to continue the program beyond 2025. As such, the GridShift: EV Charging program has been closed. Its accompanying EV charging rebate program and ChargeWise dynamic pricing pilot have also closed. Staff are now working with a vendor to conduct a comprehensive third-party evaluation of the full duration of the GridShift: EV Charging program and ChargeWise pilot. The evaluation is slated to be completed in June 2026, to provide updated and more in-depth results from the program.

EV Rate Pilot Program

Existing TOU rate structures have successfully shifted the majority of EV charging out of Peak periods (4-9pm) and into Off-Peak hours (12am-3pm). As shown in Figure 1 below, the vast majority of residential EV charging currently occurs between midnight and 4am, when grid emissions are generally much higher than they are during daytime hours when solar resources provide the majority of the grid’s electricity mix. Despite lower emissions, residential EV customers have no financial incentive to charge during daytime hours as their rate is the same from midnight to 3pm.

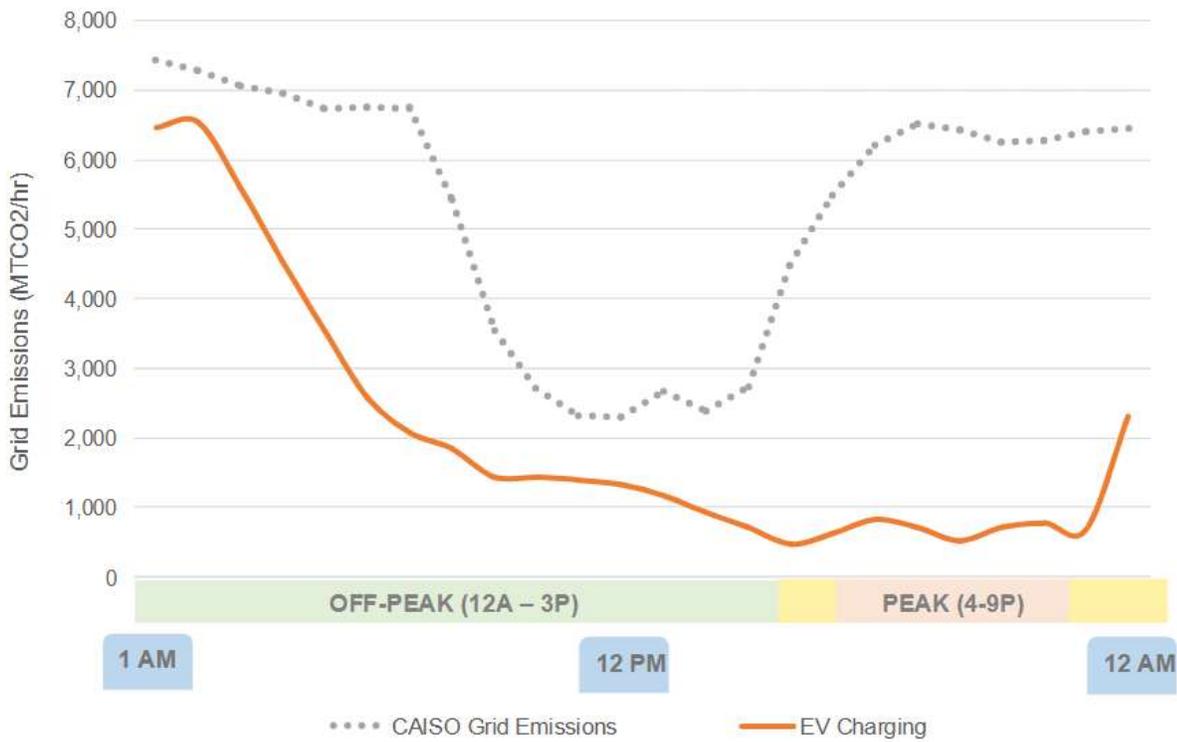


Figure 1. Average 2024 residential EV customer daily charging profile compared to hourly CAISO grid emissions (11/15/2024).

As part of the E-ELEC 1.0 Rate Pilot Program evaluation, a residential customer survey was sent to customers enrolled across all available SVCE residential rates to better understand their relationship to rates. One of the key findings was that EV owners had high appetite for more rate options. The other key finding was that over 50% of EV owners indicated working from home at least 4 days per week, implying that there is significant potential for increased daytime EV charging.

In designing the EV Rate Pilot Program, staff is combining the learnings from both the GridShift program and the E-ELEC 1.0 Rate Pilot Program in an effort to reach the following goals:

- 1) Better align charging costs with periods of cheapest, cleanest grid electricity; and
- 2) Provide more rate options and bill savings opportunities for EV customers previously enrolled in E-ELEC 1.0 and/or the GridShift: EV Charging program; and
- 3) Test SVCE’s ability to influence charging behavior through time-of-use rate design

Consistent with the new E-ELEC 2.0 Rate Pilot Program approved in May 2025, the EV Rate Pilot Program is designed to provide the lowest price electricity during the "Super-Off-Peak" period in the middle of the day (9am-3pm daily), to incentivize customers to change their charging behavior by charging mid-day instead of overnight whenever possible. The Off-Peak period is shortened to 12-9am daily, and pricing will rise slightly to help offset the significantly deeper discount during the Super-Off-Peak period. To protect customers that have less mid-day flexibility and rely on some amount of overnight charging to meet their needs but who are still interested in participating and are able to do some amount of daytime charging, the proposed increase in overnight rates is modest (10% generation rate increase) compared to the much more significant discount provided during daytime hours (50% generation rate decrease). This proposed pilot rate discount structure is shown in Table 1 below.

<i>SVCE generation rate discount relative to PG&E</i>			SVCE EV-2	SVCE EV Rate Pilot
Winter	Super-Off-Peak	9a-3p	-1%	-50%
	Off-Peak	12-9a	-1%	+10%
	Partial-Peak	3-4p & 9p-12a	-1%	-1%
	Peak	4-9p	-1%	-1%
Summer	Super-Off-Peak	9a-3p	-1%	-50%
	Off-Peak	12-9a	-1%	+10%
	Partial-Peak	3-4p & 9p-12a	-1%	-1%
	Peak	4-9p	-1%	-1%

Notes:

1. Negative means "cheaper than PG&E", positive means "more expensive".
2. SVCE EV Rate Pilot discounts reflect anticipated discount based on current design. Finalized rates will be brought back to the Board for approval after adoption of the rate pilot program.

Table 1. SVCE EV Rate Pilot discount structure as currently designed, compared to the SVCE EV-2 residential rate discount structure.

Note that staff continue to evaluate the final rates to be used for the pilot and will bring an item to the consent calendar in the first quarter of 2026 for the board to approve the final numbers. The staff report today is seeking approval of the creation of this pilot rate and for staff to proceed in this direction.

The addition of the EV Rate Pilot Program will allow EV customers who were previously on the E-ELEC 1.0 Rate Pilot Program but may not qualify for the E-ELEC 2.0 rate an opportunity to continue maximizing bill savings and engaging with SVCE pilot rate programs. SVCE estimates that there are approximately 45,000 customers that will qualify for the EV Rate Pilot program.

The EV Rate Pilot Program will use \$1.5M from the remaining funds of the previously approved \$9.5M rate pilot budget from E-ELEC 1.0 rate pilot program. This budget will provide \$1.3M in direct customer bill savings, with the remaining \$0.2M being used for program administration. This budget will support an enrollment of up to 5,000 customers over three years. The low program administration costs are made possible by strategically aligning the EV Rate Pilot Program design and implementation schedule with the already approved E-ELEC 2.0 Rate Pilot Program efforts currently underway. Both pilot rate programs would be developed in parallel, with anticipated customer launch in Q2 of 2026.

STRATEGIC PLAN

Rate pilot programs to reduce customer bills from electrification actions is directly supported by SVCE Strategic Plan Goal 7 – "Support all SVCE communities to decarbonize through local investments that reduce barriers and demonstrate sensible, scalable, and equitable solutions". Additionally, the level of customer education and communication included in the rate pilot program design support Goal 8 – "Engage customers and community stakeholders to build trust of SVCE and advance decarbonization".

ALTERNATIVE

Not adopting the proposed EV Rate Pilot program would result in only one rate pilot program being offered by SVCE in 2026, the E-ELEC 2.0 Rate Pilot Program, which requires two heat pumps for enrollment (space and water heating). The 80% of customers enrolled in the E-ELEC 1.0 Rate Pilot Program who own EVs would not be eligible for E-ELEC 2.0 and therefore would be unable to participate in a rate pilot program. Additionally, this would result in staff missing the opportunity to test an approach to EV load shifting and customer response not previously evaluated. Not adopting the proposed EV Rate Pilot Program would result in the requested \$1.5M budget remaining in the general programs allocation.

Alternately, the EV Rate Pilot Program could be approved by the Board but with requested alterations - for example, a different discount level. Staff have presented a proposed rate design and discount level believed to balance customer incentive and SVCE cost.

FISCAL IMPACT

The Board's approval of the proposed Resolution will not have a new fiscal impact as the funds were already allocated for programs. If approved, SVCE EV Rate Pilot Program expenditures will be tracked and reflected in future budgets and financial forecasts.

ATTACHMENTS

1. Resolution 2026-03 Approving Establishing the SVCE EV Rate Pilot Program with Dedicated Funding

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2026-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING ESTABLISHING THE SVCE EV RATE PILOT PROGRAM WITH DEDICATED FUNDING

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

WHEREAS, at the June 8, 2016 Board of Directors Meeting, the Board adopted the policy that the Authority’s customer generation rates for the default service will be 1% lower than Pacific Gas & Electric’s generation rates in place as of January 2017; and the policy allows reexamination of the rates, provided significant deviations in market prices or other extraordinary circumstances mandate an adjustment to the rates; and

WHEREAS, on December 14, 2022, the Board of Directors adopted Resolution No. 2022-39 approving \$9.5M for an electrification discount, to be commenced January 1, 2023 as a 10% discount to the E-ELEC residential rate, but which staff would reevaluate in 2023; and

WHEREAS, on May 14, 2025, the Board of Directors adopted Resolution No. 2025-12 approving establishing the “E-ELEC 2.0 Rate Pilot Program” with a budget of \$3.5M incentivizing behavior-driven load shift to hours when the California electric grid is cheapest and cleanest, thereby helping customers with heat pump technology reduce monthly electric bills while ultimately helping reduce system costs for all customers; and

WHEREAS, by establishing the SVCE EV Rate Pilot Program will help reduce customers’ monthly electricity bills for homes with electric vehicles while incentivizing behavior-driven load shift to daytime hours when the California electric grid is cheapest and cleanest, thereby having the potential to reduce SVCE’s regulatory compliance costs and ultimately reduce system costs for all customers; and

WHEREAS, the results from the SVCE EV Rate Pilot Program will be of use to SVCE in designing future rate offerings to spur behavior-driven load shifting to apply to all customers.

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

Section 1. The Authority shall allocate \$1.5M to establish the SVCE EV Rate Pilot Program to achieve the objectives stated above.

Section 2. The Authority’s adjusted SVCE EV Rate Pilot Program electric generation rates shall be set forth in an updated 2026 Electric Generation Rates Schedule to be brought to the Board of Directors for final approval.

PASSED AND ADOPTED this 14th day of January 2026, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Scozzola				
City of Cupertino	Director Wang				
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 Barbadillo				
City of Monte Sereno	Director Mekechuk				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Showalter				
County of Santa Clara	Director Lee				
City of Saratoga	Director Page				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Andrea Pizano, Board Secretary



Staff Report – Item 6

Item 6: Approve the Transportation Electrification Programs Budget Reallocation

From: Monica Padilla, CEO

Prepared by: Justin Zagunis, Director of Customer Success
 Nupur Hiremath, Manager of Decarbonization Programs
 Hannah Gustafson, Programs Lead

Date: 1/14/2026

RECOMMENDATION

Staff requests that the Silicon Valley Clean Energy (SVCE) Board of Directors ("Board") approve Transportation Electrification (TE) programs budget reallocation of \$7.2 million to scale three core TE programs.

EXECUTIVE COMMITTEE RECOMMENDATION

During the October 24, 2025, Executive Committee meeting, SVCE staff presented background information and key learnings from TE programs, outlining a plan to reallocate unspent TE funding to three core programs.

The main topic of discussion was the reallocation of program funding originally allocated exclusively to new construction affordable housing projects. Staff confirmed that such projects will continue to be *eligible* for Electric Vehicle (EV) charging rebates if they apply, and staff will continue outreach regarding this program to both member agency staff and developers. Staff noted however, that despite outreach over the previous few years around this program and including discussions with local affordable housing developers, there has not been much participation in this program. At the current level of \$5.8 million, staff expects these funds will not be substantially drawn down and will remain largely unspent within the next 3-5 years. Maintaining an earmark dedicated to affordable housing would guarantee funds for new affordable housing EV charging projects, but this would be contingent on funds being reserved by affordable housing developers. Therefore, releasing the program budget to a larger pool of potential customers, which would still include new affordable housing, would balance continued support and an interest in seeing these funds reinvested in a timely fashion.

The Executive Committee voted unanimously to support the proposed reallocation of \$7.2 million to three core TE programs.

BACKGROUND

In September 2019, the Board approved the Electric Vehicle Infrastructure Joint Action Plan (EVI JAP), which described strategies to reduce greenhouse gas emissions from transportation. The EVI JAP identified four priority use cases where EV charging is most needed: residential, workplace, fleet, and public. The plan also outlined six key programs to support the growth of EV charging for these use cases. The Board approved the EVI JAP with \$7.4 million in funding and also approved subsequent allocations of \$3.5 million in March 2022 and \$6.0 million in August 2022 to supplement those funds.

Since 2019, SVCE has implemented all TE programs outlined in the EVI JAP, as well as additional programs. To date, these programs have resulted in the installation of 28 DC fast chargers, 601 Level 2 and Level 1

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charging ports, with 286 more under construction. Nearly two-thirds of these chargers have been installed at multifamily residential sites.

Despite growth in EVs relative to internal combustion engine (ICE) vehicles, transportation continues to be the largest contributor (54%) of greenhouse gas emissions in SVCE's territory. As such, SVCE plans to continue programs that support the growth of electric mobility solutions, especially EVs and EV infrastructure, with a focus on serving customers who have the greatest need. Leveraging the learnings from past TE program implementation and current market conditions, staff propose consolidating and doubling down on three programs focused on EVs and EV charging for the next few years, using existing allocated TE program budget.

ANALYSIS & DISCUSSION

The current portfolio of TE programs, as shown in Table 1, comprises 11 programs that offer rebates, technical assistance, direct installation services, and fleet electrification planning services. Several TE programs have closed in 2025, largely due to the end of grant funding or contracts, or due to a decision to pivot based on program learnings.

Table 1. Current Transportation Electrification (TE) Program Portfolio

Program	Description	Status	Impact
EV Charging Rebates	Incentives for existing multifamily properties to add EV charging on site.	Active	221 L1/L2 ports installed at 25 multifamily properties
New Construction Affordable Housing EV Charging Rebates	Incentives for newly constructed affordable housing to install EV charging on site to comply with local reach codes.	Active	7 L2 ports at 1 multifamily property
EV Rebates and Education	Rebates for new and used EVs (income-qualified).	Active	330 EV rebates paid; 8 EV Education Events
Multifamily Retrofits	Whole building electrification, including EV charging, for selected deed-restricted multifamily affordable housing.	Active	2 multifamily properties enrolled
Fleet Electrification Planning	Fleet electrification technical assistance for public and non-profit fleets.	Active	15 public fleets enrolled
Innovation Onramp	Grant funding for EV infrastructure pilots designed to address multifamily charging costs.	Active	3 pilots live; 4 multifamily properties enrolled
E-bike Rebates	E-bike vouchers for income-qualified customers.	Planned (launching 2026)	Goal: 400-450 e-bikes
California Electric Vehicle Incentive Program (CALeVIP)	Incentives for DC fast chargers and Level 2 chargers in public, multifamily, or business lots.	Closed (Dec 2025)	26 DCFC; 338 L2s installed
EV Charging Technical Assistance	Planning assistance for multifamily properties interested in installing EV charging.	Closed (June 2025)	112 EV charging solution reports provided
Fast Charging Incentives (Priority Zone DCFC)	Incentives for DC fast charger installations near dense multifamily housing.	Closed (June 2025)	8 DCFC ports installed at 3 sites
CEC Grant Match programs for EV Charging	Grant funds provided as a match to CEC grants awarded to non-profit and private entities to install EV charging at multifamily sites.	Closed (June 2025)	Co-funded 34 ports at 8 multifamily properties

Key Learnings

Through the implementation of these TE programs over the last five years, SVCE has learned a great deal about barriers and solutions to accelerating EV adoption. Two of the most common barriers to broad EV adoption are: 1) higher upfront vehicle cost compared to ICE vehicles, and 2) lack of accessible home charging. As a result, EV adoption patterns have historically been highly correlated with higher wealth and single-family home ownership where there is easy access to home charging. To address these key barriers and ensure a more equitable transition to EVs, SVCE TE programs have largely focused on helping multifamily residents gain access to convenient home charging and supporting low- and moderate-income customers overcome the high upfront vehicle cost barrier.

Some of the biggest program learnings in the last five years have been that:

1. **Rebates and technical assistance drive EV charging installations, especially for multifamily properties.** High EV charging project costs are the most significant barrier, and incentives are critical to help most property owners overcome these. Technical assistance provides an on-ramp for property owners who value independent guidance on cost-saving strategies, billing management, and being connected with incentives and installers.
2. **Right-sizing EV charging can reduce project costs and serve most daily driving needs.** Lower-powered EV charging options, such as Level 1 and low-power Level 2, are more affordable than full-power Level 2 charging stations, and they reduce grid strain and avoid service upgrades, while serving most daily driving needs.
3. **Education is Key to Scale Adoption.** Engagement, outreach, and tailored education help reach new audiences and overcome barriers, for both vehicles and charging. Through ongoing community engagement and valuable feedback from community members, property owners, multifamily residents, and EV charging vendors and installers, SVCE staff have gained insight into the key concerns, questions, and barriers that customers face during this transition. Ongoing education is crucial for continuing to scale program impact.
4. **Fast charging is growing with external investments.** Since 2020, DC fast charging ports in Santa Clara County increased threefold¹, largely driven by Tesla, EVgo, and Electrify America installations². Between 2022-2025, SVCE's Fast Charging Incentive program incentivized 8 DCFC ports near dense multifamily neighborhoods. Staff decided not to run another round of this program due to challenges experienced during implementation, including the bankruptcy of a participating DCFC company, which raised concerns about reliability and ongoing maintenance. SVCE re-focused efforts on lower-power charging solutions that complement existing private and state investments in DC fast charging growth. Further, the market growth of DCFC charging in our service territory, funded by private and other public investment, means that the need for SVCE investment in this type of charging is now lower.
5. **New construction affordable housing program hasn't seen much uptake.** Launched in January 2023 as a subprogram within the EV Charging Rebate Program, the New Construction Affordable Housing EV Charging Rebate Program was created to ensure that local EV reach codes did not pose a burden for new affordable housing projects by providing rebates to cover the incremental EV charging costs driven by local codes. This incentive program has had very low participation over the last three years. Only one new affordable housing property has participated and completed its charging installation to date. Staff's understanding from conversations with affordable housing developers is that new construction affordable housing has very long and challenging development and financing timelines, and developers were more focused on funding the larger parts of projects than EVI. Additionally, state codes have largely caught up with local EV charging reach codes, meaning that new affordable housing developments are required to install EV charging to comply with state codes, and the need for ongoing reach code compliance support is less. However, SVCE plans to continue to support both new and existing affordable housing properties with their EV charging installations to accommodate the longer development and construction timelines that these projects face.

With several programs ending (as noted in Table 1), SVCE can now pivot towards the next iteration of its TE programs.

Doubling Down on Core Programs

As several first-generation programs wind down, this presents an opportunity to leverage program learnings and existing TE funding to consolidate and scale the impact of three core programs:

1. EV Charging Rebates

¹ California Energy Commission (2025). Electric Vehicle Chargers in California. Data last updated September 8, 2025. Retrieved October 27, 2025 from <https://www.energy.ca.gov/zevstats>

² Alternative Fuels Data Center. Alternative Fueling Station Locator. Retrieved October 28, 2025 from <https://afdc.energy.gov/stations#/find/nearest?fuel=ELEC>

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2. EV Charging Technical Assistance
3. EV Rebates and Education

SVCE has already run these programs and has identified them as priorities to continue and scale because:

- EV charging and EV rebates are top performers in delivering value directly to customers and additional budget will allow for greater scale and impact more quickly.
- These programs fill important gaps in the existing landscape of broader public and private EV and EV charging funding programs.
- This support has been necessary for installations that have lower costs and minimal grid impacts; continued learnings and demonstrations in these areas will help inform the local EV charging installers in deploying in these optimal ways.
- Multifamily charging projects depend on funding and assistance to scale effectively, and currently budgeted incentive funds are expected to be fully reserved within the next year.

Increasing funding to core programs will allow SVCE to continue to focus on multifamily EV charging installations while also including workplace and public locations. Relaunching a technical assistance program focused will allow SVCE to focus on right-sizing solutions that reduce project costs and install EV charging at more multifamily properties. Continuing EV education and extending funding for EV rebates for income-qualified customers will be valuable for more EV adoption, particularly in light of the federal tax credit ending. Lastly, staff anticipates that fewer, larger programs that consolidate similar efforts for more efficient administration will further support rapid scaling.

Reallocation Proposal

To fund the expansion of the three core SVCE programs, staff recommend reallocating \$7.2M in unspent or unlikely-to-be-spent funding from four previously allocated program budgets, shown in Table 2 below.

Table 2. Unspent Funding

Program	Total Budget	Unspent Budget	Reason for Unspent Budget
New Construction Affordable Housing EV Charging	\$5,795,431	\$5,781,431	Lower than expected participation; very long development timelines; unlikely to be fully spent.
Fast Charging Incentives (Priority Zone DCFC)	\$1,875,000	\$1,327,210	Program ended; shifted focus to L1/L2 solutions that complement existing external DCFC investment.
CEC Grant Match for EV Charging	\$175,000	\$90,500	Grant period ended.
CALeVIP	\$2,500,000	\$36,000 (est.)	Ended Dec 2025.
Total	\$10,345,431	\$7,235,141	

Most of the unspent funds (\$5.8M) were dedicated to solely supporting new construction affordable housing in compliance with local EV reach codes. Reallocating and consolidating this large remaining program budget to expand the core EV Charging Rebates and Technical Assistance programs will continue to support new construction affordable housing developments when and if they need financial support but will also allow other project types to benefit and draw the total allocation down.

Fast Charging Incentives, formerly known as Priority Zone DC Fast Charging (DCFC), has the second largest unspent budget (\$1.3M). The remaining unspent funds are from CEC grants and the CALeVIP program, which closed in 2025. While the exact amount of leftover CALeVIP funds is not yet known, we anticipate that approximately \$36,000 will remain after the program officially closes.

The specific budget reallocation recommendation is detailed in Table 3 below.

Table 3. Recommended Budget Reallocations to Existing Core Programs

Program	Current Total Budget	Current Available Budget	Recommended Reallocation	Recommended New Total Budget	Estimated Impact of Reallocated Funding
EV Charging Rebates (Active)	\$3,900,000	\$1,175,085	+\$5,135,141	\$9,035,141	Adds +900-2,000 chargers at 50-100 new sites
EV Charging Technical Assistance (Closed)	\$725,000	\$8	+\$1,100,000	\$1,100,008	Supports 200+ new sites
EV Rebates and Education (Active)	\$1,500,000	\$741,185	+\$1,000,000	\$2,500,000	Adds 450 EV rebates and at least 10 new EV education events
TOTAL	\$6,125,000	\$1,916,278	\$7,235,141	\$11,135,149	

The added funding will, at a minimum, double the impact of the core programs. Staff see this as the most effective, scalable path to enhancing EV charging options and encouraging EV adoption in our territory. No new funding is being allocated to the TE programs portfolio; this is merely shifting funds away from some TE programs and towards others. Staff will continue to consider additional adjustments to these three core programs based on program performance, market and technology changes, and community feedback.

STRATEGIC PLAN

This recommendation supports Goal 7 of SVCE's Strategic Plan to "Support all SVCE communities to decarbonize through local investments that reduce barriers and demonstrate sensible, scalable, and equitable solutions."

ALTERNATIVE

In the absence of approving this program reallocation, the Board may direct staff to:

1. Not reallocate any unspent TE program funds. Leave current allocations as-is.
2. Not reallocate any unspent TE program funds. Move unspent funds to unallocated program budget and reallocate them at a future date. Continue to administer the "Active" and "Planned" programs at currently funded levels, which are expected to be fully reserved or spent within 6-12 months.
3. Reallocate funds to different TE programs other than those proposed.

Staff requests approval for the proposed reallocation as this will help ensure the longevity of high-impact TE programs with improved administrative efficiency. Without the reallocation of these funds to core programs, SVCE's ability to reduce carbon emissions from transportation will be limited.

FISCAL IMPACT

There is no fiscal impact associated with reallocating the remaining TE program funds as these funds have already been authorized and committed by the Board to fund TE programs. All expenditures will be reflected in the appropriate mid-year and fiscal budgets as drawdown from the overall Programs Fund if approved.



Staff Report – Item 7

Item 7: Receive Update on Net Billing Tariff (NBT, NEM 3.0) Following First Year of Customer Performance

From: Monica Padilla, CEO

Prepared by: Justin Zagunis, Director of Customer Success
Peyton Parks, Energy Services Manager

Date: 1/14/2026

RECOMMENDATION

Staff requests the Silicon Valley Clean Energy (SVCE) Board of Directors (“Board”) receive an update on the status of solar and the Net Billing Tariff (NBT, NEM 3.0) after the first year of customer performance. This is an informational update with no action requested.

BACKGROUND

Net Billing Tariff diverges from previous versions of solar Net Metering in the underlying mechanics and calculations for determining the value of excess solar energy exported to the grid. While the previous versions of Net Metering, NEM and NEM 2.0, were predominantly retail rate-based, NBT operates under hourly tracking of the value of exports at a varying rate much closer to the wholesale price of energy. Accounting for exported energy values in this way significantly reduces the total incentives paid to customers generating solar energy compared to previous versions of the program but aligns the incentives with the actual value of that excess energy to the grid.

The roll-out of NBT was a statewide effort led by the California Public Utility Commission (CPUC) and adopted by the three major Investor-Owned Utilities (IOUs). Ultimately, the goal of the NBT program was threefold: 1) to better align solar incentives with the market price of energy, 2) to slow the deepening of the duck curve and encourage electrification in California by incentivizing self-consumption and storage by reducing the benefits paid for exports, and 3) to increase equity across the system by correcting for the cost-shift to non-solar customers. SVCE and its Board believed that the goals of the NBT program were directionally correct and aligned with its own.

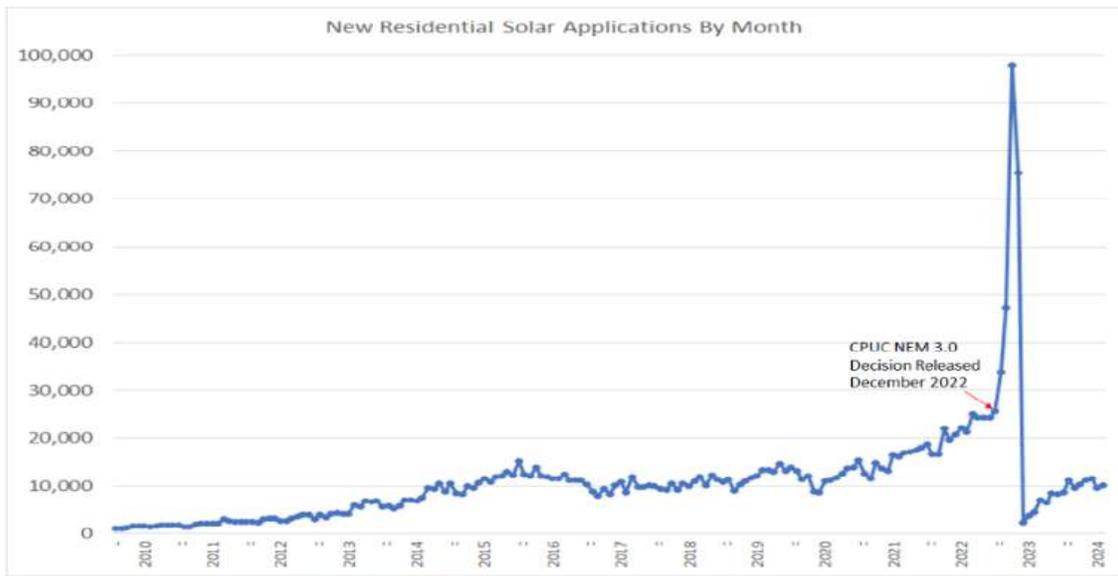
At its November 8th, 2023 meeting, the SVCE Board of Directors voted to approve the SVCE Net Billing Tariff without modification in order to mirror the Pacific Gas and Electric (PG&E) version of the program for at least the first year. During that time, staff was directed to observe and measure the impact that the tariff’s adoption had on customers individually, collectively, and on the local solar industry. This staff report serves as the report-out on these items.

Originally slated to become operational in December of 2023, PG&E was forced to delay NBT’s implementation within its billing system until April of 2024 due to the complexity of NBT’s underlying mechanics. One year later, in April 2025, SVCE performed its first solar cash-out process for NBT customers. These inaugural cash-outs were concluded in early June 2025 and represented the conclusion of the first year of NBT.

ANALYSIS & DISCUSSION

Overall Solar Adoption

After passage of the Net Billing Tariff by the CPUC in December 2022, a firm end date for NEM 2.0 was put in place, after which all customers filing interconnection applications for solar projects would be defaulted to the Net Billing Tariff. In the months leading up to the April 15th, 2023 end date, an influx of solar applications were received and processed by PG&E as solar vendors ramped up their marketing efforts based on the urgency to secure a NEM 2.0 interconnection agreement – as NEM 2.0 represents a shorter return on investment for solar equipment installation. New applications under NBT dropped sharply after the deadline, but the backlog of NEM 2.0 installations from this influx ended up being smoothed across 2023 and into 2024 due to installer logistical constraints.



(Source: author calculations from [California DG Stats](#))

Though reduced in number, initially, NBT interconnection applications were received in 2023 and began to ramp in 2024. Some customers with NBT interconnection agreements had their systems commissioned prior to PG&E’s implementation of NBT within its billing system. These customers were allowed to net meter under NEM 2.0 rules until NBT billing functionality was made active in April 2024.

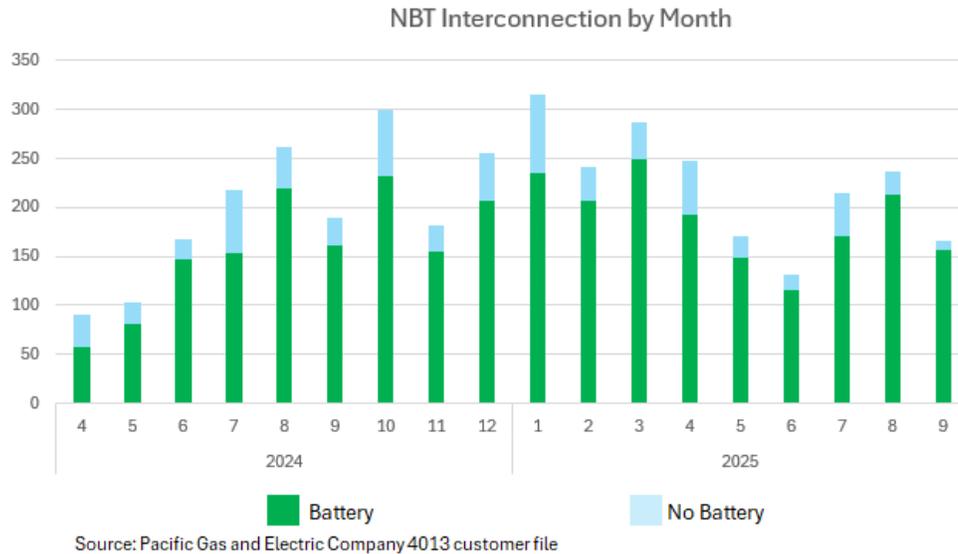
Solar In SVCE Territory

Year	SVCE Solar Customers	SVCE NBT Customers	Total Solar Customers	Solar Growth YOY
2018	17,995		17,995	
2019	20,599		20,599	2,604
2020	21,329		21,329	730
2021	25,559		25,559	4,230
2022	29,916		29,916	4,357
2023	34,592		34,592	4,676
2024	36,685	1,767	38,452	3,860
2025	39,248	2,009	41,257	2,805

Annual stats 2018-2024 gathered from December of each year. 2025 stats are from October

Strong installation numbers through 2024 partly indicate that NEM 2.0 installations were concluding from a previous backlog. However, the growth in installations through October 2025, represented in the table above, seems to indicate that customers have a continued appetite for solar installations under the Net Billing Tariff.

As of September 2025, SVCE is supporting 3,776 NBT customers, of which 3,106 installations are paired with energy storage (82%). As NBT systems were commissioned under the tariff in April 2024, data reveals that there were 91 NBT installations that became operational at the time, indicating that a relative few customers had chosen to pursue solar under the updated tariff in the time between April 15th, 2023 and April 30th, 2024. NBT installations have increased since the initial roll-out to an average of 216 installations per month.



First Cash-Out for NBT Customers

There were 780 NBT customers, or about 28%, that were net generators at the end of their first solar year, meaning that they had exported more kilowatt hours than they had consumed over the course of 12 months. As with NEM and NEM 2.0 net generators, these NBT net generators are entitled to be paid by SVCE for this excess energy at the end of the year. The average payout for excess annual exported energy across NBT customers in 2025 was ~\$56. NEM and NEM 2.0 customers, by comparison, had approximately 23% net generators with the average payout amounting to ~\$137.

Other Factors Affecting Solar and Storage Adoption

There are other factors that affect customer decisions and ability to install solar and storage beyond the export compensation methodology, though that has historically been a strong driver. SVCE can play a facilitating role through things like:

- SVCE’s Solar + Storage Assistant on the eHub website, which helps prospective solar customers gather quotes for their project and consider the impact of storage. This is currently open to customers and has been part of SVCE’s services since October 2020.
- SVCE’s Zero Interest Financing program is testing the interest and impact of offering financing for solar and storage alongside electrification projects and will inform possible offers in the future. This program is currently open to customers.
- SVCE previously ran a program with Sunrun to install and enroll local batteries in a program to provide resource adequacy benefit. This included targeted outreach and incentives to customers who enrolled. This program is no longer enrolling new customers.
- As part of updated demand flexibility efforts, SVCE’s Board approved a contract with Lunar to run a software platform that can manage the dispatch of various behind-the-meter assets to SVCE’s and the customer’s benefits. In 2026, SVCE will be offering an incentive program to support the enrollment of existing batteries and the installation of new batteries to connect to this platform and provide aggregated flexibility and support customer financial savings.

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Staff has continued to monitor and identify ways to better serve current and potential future solar customers while balancing against the needs of the grid and other non-participating customers. Further, the adoption of solar and storage can provide significant benefits as part of a customer's electrification journey in alignment with SVCE's mission.

There are also recent changes that may have a negative impact on solar and storage projects that are not yet reflected in the data from this year:

- The end date for the federal solar tax credit for owned solar systems (30%) is ending on December 31, 2025. Leased systems, or those commissioned under power purchase agreements (PPAs) qualify for the tax credit until December 31, 2027 as a direct-to-installer incentive. Battery storage in third-party-owned systems will qualify until December 31, 2032.
- Demand Side Grid Support (DSGS), a California Energy Commission (CEC) funded reliability program - and the largest "Virtual Power Plant" in California - did not receive additional funding for 2026 and beyond. The program began in 2022 and has over 700 MW of enrolled capacity statewide and helped lower the net cost of battery ownership paired with solar, through standby capacity payments and ongoing performance payments.
- SVCE made a change to its Net Surplus Compensation (NSC) rate that will go into effect for the 2026 cash-out, reducing the payment for the net generators to the value the energy has to the grid. As explored in the February 2025 staff report, this cash-out change better aligns the compensation with actual grid value.

Continued Observation

With many recent and upcoming changes, staff plan to continue to monitor the local solar and storage market in the coming years, specifically to ensure that customers are receiving fair value for the benefits that their projects offer to SVCE and the grid. As major changes are observed, staff will consider additional programs or support that could be offered if necessary and return to the Board with another update and proposals. Staff plans to return to the Board in first quarter of 2026 to propose adjustments to the NBT cash-out process for April 2026 based on initial findings of how the NBT rules interact with the Net Surplus Compensation process, which will provide some additional customer benefit if approved.

STRATEGIC PLAN

This informational update is provided in alignment with Strategic Plan, Goal 7: 'Support all SVCE communities to decarbonize through local investments that reduce barriers and demonstrate sensible, scalable, and equitable solutions' and Goal 8: 'Engage customers and community stakeholders to build trust of SVCE and advance decarbonization'.

FISCAL IMPACT

Receiving this informational update has no fiscal impact.