Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, November 9, 2016
7:00 pm
Santa Clara County Board Room
70 West Hedding Street, 1st Floor
San Jose, CA

AGENDA

Call to Order

Roll Call

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

Convene to Closed Session

Public Employee Performance Evaluation
Title: Chief Executive Officer

Conference with Labor Negotiator
Agency Representative: Rod Sinks, Chair, Board of Directors
Represented Employee: Chief Executive Officer

Report from Closed Session

Public Comment on Matters Not Listed on the Agenda
The public may provide comments on any item not on the Agenda. Speakers are limited to 3 minutes each.

Consent Calendar (Action)

1a) Approve Minutes of the October 12, 2016, Board of Directors Meeting
1b) Approve Amendment to Agreement with Richards, Watson & Gershon for Legal Services

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Clerk for the Authority at (408) 730-7483. Notification 48 hours prior to the meeting will enable the Authority to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.105 ADA Title II).
1c) Authorize CEO to Execute Orders with the Del Gavio Group to Furnish SVCEA Office

1d) Approve FY2016-2017 Budget

Regular Calendar

2) Executive Committee Report (Discussion)

3) CEO Report (Discussion)

4) Approve Credit Agreement and other related documents with River City Bank (Action)

5) Approve Memorandum of Understanding with the Cities of Gilroy, Mountain View, and Sunnyvale and the County of Santa Clara for Provision of Loan Guaranty (Action)


7) Approve Agreement for ZGlobal Inc. for Power Supply Scheduling Coordination Services (Action)

Board Member Announcements

Adjourn
Call to Order

Chair Sinks called the meeting to order at 7:03 p.m.

Chair Sinks led the salute to the flag.

Roll Call

Present:
Chair Rod Sinks, City of Cupertino
Vice Chair Rob Rennie, Town of Los Gatos (arrived at 7:04 p.m.)
Director Jeannie Bruins, City of Los Altos (arrived at 7:06 p.m.)
Alternate Director Carl Cahill, Town of Los Altos Hills
Director Burton Craig, City of Monte Sereno
Director Steve Tate, City of Morgan Hill
Director John McAlister, City of Mountain View (arrived at 7:06 p.m.)
Director Joe Simitian, County of Santa Clara (arrived at 7:05 p.m.)
Director Howard Miller, City of Saratoga
Director Jim Griffith, City of Sunnyvale
Director Liz Gibbons, City of Campbell
Director Daniel Harney, City of Gilroy (arrived at 7:20 p.m.)

Absent:
None

Public Comment on Matters Not Listed on the Agenda

Bruce Karney, President, Carbon Free Mountain View, announced Carbon Free Mountain View is expanding its geographic scope and will be changing its name in the future, and announced new members of the Board of Directors from the Town of Los Altos Hills and Carbon Free Palo Alto. Karney spoke regarding annual goals and measurements for greenhouse gases by city.

Consent Calendar

MOTION: Director Miller moved and Director Bruins seconded the motion to approve the Consent Calendar.
The motion carried unanimously with Director Harney absent.
1a) Approve Minutes of the September 14, 2016, Board of Directors Meeting

Regular Calendar

2) Executive Committee Report

Chair Sinks reported Executive Committee discussions included retirement plans, a budget update, a modified logo, and the cancellation of the November and December regular Executive Committee meetings and scheduling of a special meeting on December 7.

3) CEO Report

CEO Tom Habashi provided the CEO report including updates regarding the receipt of the CPUC certification letter, River City Bank approval of loan terms, execution of the office lease and tenant improvements in progress, and creation of a Board agenda planning report. CEO Habashi noted the agenda planning report and the list of agreements executed by the CEO are included as attachments to the staff report.

Communications Manager Misty Mersich presented a community outreach report and the final logo, provided information about the rollout of the logo, and provided an update on outreach to large commercial customers.

Chair Sinks opened public comment.

James Tuleya, Sunnyvale resident and member of Sunnyvale Cool, Cool Cities Team and the Carbon Free Mountain View Board, stated Peninsula Clean Energy is still looking for office space and provided comments regarding the early enrollment program for large commercial customers.

Chair Sinks closed public comment.

4) Authorize CEO to Approve Service Agreement with PG&E

CEO Habashi presented the staff report and responded to Board questions. General Counsel Greg Stepanicich responded to Board questions.

Chair Sinks opened public comment.

James Tuleya stated he formerly worked for PG&E in regulatory affairs and spoke regarding tariffs and fees. Tuleya provided written materials, spoke in support of the staff recommendation and responded to Board questions.

Chair Sinks closed public comment.

MOTION: Director Bruins moved and Director McAlister seconded the motion to authorize the Chief Executive Officer to execute a Service Agreement with Pacific Gas and Electric Company including the required $100,000 deposit to the CPUC. The motion carried unanimously.

5) Authorize Executive Committee to Review and Approve Agreement with Noble Americas Energy Solutions LLC

Operations Manager Melody Tovar provided the staff report and responded to Board questions. CEO Habashi provided additional information.
Board members provided comments regarding items they would like to see addressed in the agreement.

Chair Sinks requested a copy of the Peninsula Clean Energy agreement with Noble Americas Energy Solutions LLC be provided to the entire Board.

Chair Sinks opened public comment.

James Tuleya spoke in support of the staff recommendation, provided information regarding Peninsula Clean Energy’s experience with the vendor, and spoke regarding PG&E’s proposed reduced metered data management agent fees.

Chair Sinks closed public comment.

Chair Sinks summarized Board comments to include interest in data security, data ownership, understanding the length of the contract, any conflicts particularly considering an acquisition by Calpine, how the vendor would scale, metrics regarding the location of call centers, and metrics in terms of satisfaction and wait time which would indicate whether a positive experience is being provided to users.

Chair Sinks stated the Board can send individual comments directly to Operations Manager Tovar following review of Peninsula Clean Energy’s agreement with Noble.

Director Simitian added to the list of items the issues of privacy policy and practices which should be consistent with the implementation plan.

MOTION: Director Simitian moved and Director Miller seconded the motion to authorize the SVCEA Executive Committee to review and approve the agreement with Noble Americas Energy Solutions LLC for Data Management and Customer Call Center Services, including the direction to staff as indicated by the Board and reiterated by the Chair.

The motion carried unanimously.

6) Authorize CEO to Approve Membership of CalCCA

CEO Habashi presented the staff report and responded to Board questions.

Chair Sinks opened public comment.

John Scarboro inquired regarding staffing of CalCCA.

James Tuleya spoke in support of sharing the workload of regulatory affairs and in support of the staff recommendation.

Chair Sinks closed public comment.

MOTION: Director Bruins moved and Director Craig seconded the motion to authorize the Chief Executive Officer to approve SVCEA’s membership of the California Community Choice Association (CalCCA).

The motion carried unanimously.

Following action on Item 6, Director Simitian left the meeting.

7) Approve Resolution to Adopt Personnel Policies/Handbook

CEO Habashi presented the staff report and requested the approval be subject to minor modifications which would be approved by the CEO and the General Counsel. General Counsel Stepanicich stated the proposed resolution would be modified in Section 1 following the statement, “The policies and procedures
in the attached SVCE Employee Handbook are hereby approved” to add, “…subject to any minor revisions approved by the CEO and General Counsel.”

CEO Habashi and General Counsel Stepanicich provided additional information and responded to Board questions.

Chair Sinks opened public comment.
No speakers.
Chair Sinks closed public comment.

Board members provided comments regarding the handbook including notation of minor typographical errors, clarification regarding availability of sick leave, clarification regarding benefits for part time employees and for long term partners, and the stringency of the dress policy.

CEO Habashi stated he has received the Board’s comments regarding the dress policy and will make adjustments as necessary.

MOTION: Director McAlister moved and Director Miller seconded the motion to approve a resolution adopting personnel policies for SVCE as described in the Employee Handbook and designating the CEO as the personnel officer and appointing authority, including the change to Section 1 of the resolution to allow the CEO and General Counsel flexibility to modify the handbook with the exception of items regarding compensation which should come to the Executive Committee and then to the Board for approval.
The motion carried unanimously with Director Simitian absent.

8) SVCE Budget Update

CEO Habashi presented an updated budget for discussion and stated the budget will be brought to the Board for approval next month. CEO Habashi responded to Board questions.

In response to Board comments, CEO Habashi stated the money paid to PG&E for data management will be reflected separately in the budget.

Chair Sinks opened public comment.
No speakers.
Chair Sinks closed public comment.

9) Update on Commercial Customers

Communications Manager Mersich introduced the item. Don Bray, Joint Venture Silicon Valley, provided a PowerPoint presentation regarding commercial and industrial customers. CEO Habashi provided additional information.

Chair Sinks opened public comment.

Bruce Karney suggested a way to make the opt-up product more appealing than the default option would be to source all of the renewable energy for the opt-up product from within California.

Chair Sinks closed public comment.

Board Member Announcements

Director John McAlister, City of Mountain View, reported his attendance at a League of California Cities Annual Conference session regarding (Renewable Carbon Free) RCFs.
Chair Rod Sinks, City of Cupertino, reported his attendance at the Peninsula Clean Energy launch.

Vice Chair Rob Rennie, Town of Los Gatos, provided additional information regarding Director McAlister’s comments.

Adjourn

Chair Sinks adjourned the meeting at 9:34 p.m.
FIRST AMENDMENT TO
LEGAL SERVICES AGREEMENT

This First Amendment to Legal Services Agreement (the “Amendment”) is entered into this 11th of November, 2016, by and between the Silicon Valley Clean Energy Authority (the “Authority”) and Richards, Watson & Gershon, a professional corporation (“General Counsel” or “Law Firm”).

RECITALS

A. The Authority entered into an agreement with the Law Firm on April 1, 2016 for the provision of General Counsel services (the “Agreement”).

B. The Agreement provided for a term of eight months expiring on November 30, 2016 with a cost not to exceed amount of $80,000.

C. The Authority desires to extend the Agreement by ten months with an increase in the cost not to exceed amount to pay for such services.

NOW THEREFORE in consideration of the foregoing and other good and valuable consideration, the Agreement is amended as follows:

1. Section 2.0 of the Agreement is amended to read:

2.0. TIME OF PERFORMANCE. The term of this Agreement shall be for a period of eighteen months, commencing April 1, 2016 and ending September 30, 2017 unless extended by the mutual written agreement of the parties.

2. Section 3.1 of the Agreement is amended to read:

3.1 Compensation. Fees for all legal services provided hereunder shall be charged in accordance with Exhibit “B” which is attached and incorporated by reference. The total amount of fees and expenses under this Agreement shall not exceed $190,000. This compensation amount shall not be increased without the prior approval of the Authority Board of Directors. General Counsel shall notify the Authority prior to incurring billable fees and costs in excess of 95% of the not-to-exceed amount.

All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereby cause this Agreement to be executed by their duly authorized representatives as of the date first set forth above.
SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ______________________________
     Chair, Board of Directors

RICHARDS, WATSON & GERSHON
A Professional Corporation

By: ______________________________
     Gregory W. Stepanicich
Staff Report – Item 1c

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 1c: Authorize CEO to Execute Orders with the Del Gavio Group to Furnish SVCEA Office

Date: 11/9/2016

RECOMMENDATION

Authorize the Chief Executive Officer to execute orders for goods and services with the Del Gavio Group, not to exceed $140,000 through September 30, 2017, to furnish the SVCEA office.

BACKGROUND

In September 2016, the Board authorized the lease of office space for SVCEA, located at 333 W El Camino Real. Tenant improvements on the space are complete, combining two suites into one for SVCEA, providing space for approximately 25 staff.

In May 2016, the Board authorized the CEO to execute agreements for goods and services up to $25,000. The cost of furnishing the SVCEA office exceeds $25,000 and requires Board approval.

ANALYSIS & DISCUSSION

Staff have begun work with the Del Gavio Group to design and furnish the SVCEA office. Del Gavio was recommended by the City of Sunnyvale as they have done work to furnish or renovate offices for Sunnyvale and have relationships with various furniture manufacturers and retailers to efficiently order and install office furniture. Work completed to date includes office layout and design, furniture selection, quick ship purchase and installation of furniture for five of the interior offices, and selected furniture and appliances, for a total not to exceed $25,000.

Furnishing the whole SVCEA office is estimated to cost $140,000 (including the smaller order already placed). This will include furnishing for a total of 8 offices, 2 conference rooms, 18 cubicle workstations, 2 intern work stations, a small break area, a reception and lobby area, and general filing and storage needs. Completion of the first five offices is expected by the end of November with the full office completed in January 2017. The cost estimate includes design, furniture, delivery, and installation.

This recommendation does not include the purchase of IT and telecommunication equipment and service, which is being done concurrently through appropriate vendors and service vendors, which guidance and assistance from City of Sunnyvale staff. Staff will return with any relevant request in excess of the CEO's expenditure authority.

ATTACHMENTS

1. SVCEA Office Layout
Silicon Valley Clean Energy Authority  
Budget FY 2016-2017  
Oct. 1, 2016 - Sep 30, 2017

**REVENUE**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply Revenue</td>
<td>37,700,000</td>
</tr>
<tr>
<td>Initial Funding</td>
<td>1,506,000</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td>39,206,000</td>
</tr>
</tbody>
</table>

**EXPENDITURES**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply Cost</td>
<td>$24,754,000</td>
</tr>
<tr>
<td>SVCE and Members Wages</td>
<td></td>
</tr>
<tr>
<td>SVCE Salaries</td>
<td>1,662,000</td>
</tr>
<tr>
<td>SVCE Benefit</td>
<td>332,400</td>
</tr>
<tr>
<td>Members Transitional Staff</td>
<td>39,000</td>
</tr>
<tr>
<td><strong>SVCE Wages and Members Wages Subtotal</strong></td>
<td>$2,033,400</td>
</tr>
<tr>
<td>Consultant Support</td>
<td></td>
</tr>
<tr>
<td>Data Management</td>
<td>700,000</td>
</tr>
<tr>
<td>Technical Consulting</td>
<td>185,000</td>
</tr>
<tr>
<td>Community Outreach</td>
<td>160,000</td>
</tr>
<tr>
<td>Admin. And Legal</td>
<td>205,000</td>
</tr>
<tr>
<td><strong>Consultant Support Subtotal</strong></td>
<td>$1,250,000</td>
</tr>
<tr>
<td>Program Roll-out</td>
<td></td>
</tr>
<tr>
<td>Bond</td>
<td>100,000</td>
</tr>
<tr>
<td>Notifications</td>
<td>940,000</td>
</tr>
<tr>
<td>Marketing and Promotion</td>
<td>200,000</td>
</tr>
<tr>
<td><strong>Program Roll-out Subtotal</strong></td>
<td>$1,240,000</td>
</tr>
<tr>
<td>Office Lease and Capital Expense</td>
<td></td>
</tr>
<tr>
<td>Office Lease</td>
<td>140,000</td>
</tr>
<tr>
<td>Furniture and Electronics</td>
<td>180,000</td>
</tr>
<tr>
<td><strong>Off. Lease and Capital Expense Subtotal</strong></td>
<td>$320,000</td>
</tr>
<tr>
<td>Travel</td>
<td>$27,000</td>
</tr>
<tr>
<td>Misc.</td>
<td></td>
</tr>
<tr>
<td>To Reserves</td>
<td>2,262,000</td>
</tr>
<tr>
<td>Initial funding repayment</td>
<td>225,000</td>
</tr>
<tr>
<td>LOC initial cost</td>
<td>50,000</td>
</tr>
<tr>
<td>Interest expense on LOC</td>
<td>60,000</td>
</tr>
<tr>
<td><strong>Misc. Subtotal</strong></td>
<td>$2,597,000</td>
</tr>
</tbody>
</table>

**Total Expenditures**  
$32,221,400

**Net Revenue**  
$6,984,600
REPORT

The City of Campbell Opt for GreenPrime
Campbell City Council approved a resolution to opt-up to GreenPrime energy for city facilities once SVCE begins serving the member cities in April 2017. The City of Mountain View has taken action several months ago to prepare to do the same. The City of Gilroy is studying the fiscal impact of following the same path, while the town of Los Altos Hills has expressed interest to “opt-up” all of the utility customers in town.

Employment Offers
Three offers were made to fill the Board Clerk/Executive Assistant, Community Outreach Specialist and the Account Services Manager positions. The offers were accepted and starting dates are set at November 14, November 21 and January 4. A second round of interviews for the Director of Finance and Administration will conclude tomorrow, November 10, and an offer should be made to fill that position by Monday, November 14, 2016.

New Office
The tenant improvements work for the new office was completed on time. We are awaiting the arrival of furniture and electronic equipment to move to the new SVCE Headquarters located at 333 W. El Camino Real, Sunnyvale. That move is scheduled for Monday, November 14, 2016.

Data Management Contract
The Executive Committee approved the Data Management Contract with Noble Solutions. Additional minor modifications were negotiated during the last two weeks. The executed contract will be emailed to the Board members in the very near future.

Regional Outreach
The California Community Choice Association (CalCCA) held their first annual meeting on October 20, 2016 in San Francisco. The meeting attracted several representatives that are in various stages of examining the feasibility of forming a CCA in their communities. Following that meeting, officials from the Governor’s office and the CPUC requested to meet with CalCCA representatives. These meetings are scheduled for the second half of November 2016.

ATTACHMENTS
1. Community Outreach Report
Community Outreach Update
October 2016/November 2016

1. Events and Presentations

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Community</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presentation: Los Gatos Leadership Group, organized by the City and Chamber of Commerce</td>
<td>11/4/16</td>
<td>Los Gatos</td>
</tr>
<tr>
<td>Presentation: League of Women Voters of Southwest Santa Clara Valley</td>
<td>11/14/2016</td>
<td>Campbell, Los Gatos, Saratoga, Monte Sereno</td>
</tr>
</tbody>
</table>

2. Communications and Marketing Update

Staff has been working to update and create new material with new branding and logo. An updated Fact Sheet has been added to the website for the public to access and printed copies will be made available to Board members to bring back to their cities to put into a public location.

Staff is also busy working to prepare for the April launch and notification of customers. Working with our web team to determine the correct structure for our website that is user friendly, where customers will be able to see information regarding GreenStart and GreenPrime including rates, % renewable content, an updated FAQ section and be able to Opt-Up to GreenPrime or Opt-Out. Also, crafting scripts for our Call-center team to follow, ensuring the information given by the customer call center staff is technically accurate and friendly.

3. Social Media Update

Silicon Valley Clean Energy has two social media pages on Facebook and Twitter. If you aren’t already following SVCE on Facebook or Twitter please do, and tell your friends! Staff will also be reaching out to all cities, to make sure their pages are connecting with ours.

Statistics for these pages will be reported monthly, with the purpose of growing our reach over time.

Facebook: [www.facebook.com/SVCleanEnergy](http://www.facebook.com/SVCleanEnergy)
- October 2016
  - 162 Facebook followers
  - 25 page views
  - 15 total Likes for all posts
  - Average of 42 people saw our posts in October
Twitter: @SVCleanEnergy

- October 2016
  - 102 followers
  - 30 profile visits
  - 3 mentions (other Twitter users that mentioned @ SVCleanEnergy!)

The Board and all interested members of the public are encouraged to join our social media pages and help share our posts. We post regularly at least once a week, sharing CCE news, SVCE relevant information. If you have not already, we encourage you to follow our pages and spread the word about them!
### SVCEA Board of Directors Agenda Planning

#### MILESTONES

<table>
<thead>
<tr>
<th>DEC</th>
<th>JAN 2017</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extend Contracts w/ PEA, Sunnyvale, Greg S.</td>
<td>Set Rates</td>
<td>Ph 1 Notice # 2</td>
<td>Launch - Phase 1</td>
<td>Ph2 Notice #1</td>
<td>Ph2 Notice #2</td>
</tr>
<tr>
<td>Ph 1 Notice # 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### ADMINISTRATION, POLICIES

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Presentation on Rate Setting</td>
<td>Approve Rates</td>
<td>Approve Risk Management Policies &amp; Procedures</td>
<td>Update on Operation Launch</td>
<td>Update on Operation Launch</td>
<td>Approve Strategic Plan</td>
</tr>
<tr>
<td>Provide feedback on Noticing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approve retirement plan for SVCE employees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### STAFFING

| Staff Appointments | Staff Appointments | | | | |

#### CONTRACTS

| Approve Power Supply Execution Sheets | Approve Agmts w/Benefits Providers | Approve Transaction Agreement with Power Suppliers | Approve Contract for Vendor to Send Notifications | | |
Staff Report – Item 4

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO
       Patty J. Kong, Finance and Administrative Services Director,
       City of Mountain View

Item 4: Approve Credit Agreement and other related documents with River City Bank

Date: 11/9/2016

RECOMMENDATION

Authorize the CEO to execute the Credit Agreement, any nonfinancial amendments, and other related documents, with River City Bank to provide up to a $2.0 million Non-Revolving Line of Credit (NRLOC) and up to a $18.0 million Revolving Line of Credit (RLOC), substantially in the form attached.

BACKGROUND

On behalf of the Silicon Valley Clean Energy Authority (SVCEA), the City of Mountain View (MV) was given the task of obtaining credit and banking services to support SVCE operations. SVCE has identified the need for up to $2.0 million NRLOC for prelaunch operations and up to $18.0 million RLOC to fund reserves and negative cash flow associated with power supply acquisition.

On May 25, 2016, a Request for Proposal (RFP) was issued by MV with the assistance from SVCEA consultants, the City of Cupertino (Cupertino) and the County of Santa Clara (County) for credit and banking services on behalf of SVCE. Five proposals were received on July 5. A committee consisting of the SVCE CEO, consultants and representatives from MV, Sunnyvale (SV), Cupertino and Morgan Hill (Committee) reviewed and evaluated the proposals and selected two finalists for in person presentations and interviews on August 3.

River City Bank (RCB) was the unanimous recommendation by the Committee based on their credit proposal, which includes:

1. up to $18.0 million LOC with no guarantee required
2. competitive rates
3. knowledge and expertise in the CCE industry

RCB was founded in 1973, is headquartered in Sacramento, with a main office in Walnut Creek serving the Bay Area, and has the size and strength to meet the financing needs of SVCE. RCB is experienced in the CCE industry and has served the banking needs of Marin Clean Energy since 2010. SVCE will be serviced out of their Walnut Creek office.

The extension of credit is contingent upon the acceptance of the other banking services, which were accepted by the SVCEA Board on September 14, 2016.
ANALYSIS & DISCUSSION

The proposal from RCB demonstrates its commitment to the success of SVCE and will provide credit services as follows:

- **RLOC** - Up to $18.0 million, with no Guarantee or Collateral requirement, to fund lockbox collateral pre-launch and provide working capital after launch.
- **NRLOC** - Up to $2.0 million, requires a full guarantee or collateral and is provided for working capital prior to launch.

To our knowledge, the RLOC to a CCE without a guarantee is unprecedented to date. From the RLOC, a Debt Service Reserve Account will be funded in an amount of not less than $1.9 million as security for the payment and performance by SVCE. The RLOC is for a term of one year, and could be converted to a term loan of up to five years. Interest is based on a variable rate tied to the one month LIBOR rate and is payable monthly, no principal payment is required until termination.

The NRLOC requires 100% guarantee, which is being provided by the cities of Sunnyvale, Mountain View and Gilroy (charted cities) and the County of Santa Clara, proportionate to their voting shares. The NRLOC is for a term of one year and may be requested to be extended for up to three months. Interest is based on a variable rate tied to the one month LIBOR rate and is payable monthly, no principal payment is required until termination.

Both the NRLOC and RLOC have initial fees and costs associated with the credit. The RLOC and NRLOC are required to be repaid prior to any payments made on any subordinate debt, including the repayment of initial costs contributed by the Joint Powers Authority (JPA) member agencies.

The Credit Agreement also calls for certain minimum revenue requirements to be met by SVCE and other financial targets. Based on the financial projections of SVCE, it is anticipated both the RLOC and the NRLOC can be repaid within 12 months of launch.

**ATTACHMENTS**

1. Credit Agreement
CREDIT AGREEMENT

Dated as of November 15, 2016

by and between

SILICON VALLEY CLEAN ENERGY AUTHORITY,
as Borrower

and

RIVER CITY BANK,
as Lender
CREDIT AGREEMENT

This CREDIT AGREEMENT (this “Agreement”) is entered into as of November 15, 2016, by and between SILICON VALLEY CLEAN ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“Borrower”), and RIVER CITY BANK, a California corporation (“Lender”).

W I T N E S S E T H:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a credit facility which includes a non-revolving line of credit and a revolving line of credit upon and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION.

Section 1.1. Definitions. All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them on Exhibit A.

Section 1.2. Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.
(e) **Contracts.** Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) **Laws.** References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) **Dollars and $.** All references to “dollars” or “$” refer to United States dollars.

### Section 1.3. Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower’s financial condition will be the same after such change in GAAP as if such change had not been made.

### SECTION 2. THE NON-REVOLVING CREDIT AND THE REVOLVING LINE OF CREDIT.

**Section 2.1(a). Non-Revolving Credit.** Subject to the terms and conditions hereof, Lender agrees to make a non-revolving credit facility (the “Non-Revolving Credit”) available to Borrower for the sole purpose of funding negative cash flow during the pre-revenue collection phase of Borrower’s start-up in an aggregate principal amount not to exceed, at any one time, the Non-Revolving Credit Commitment at any time prior to the Non-Revolving Credit Termination Date. The Non-Revolving Credit will be disbursed in one or more advances (each, an “Advance” and, collectively, the “Advances”), provided that the conditions precedent to Advances specified in Section 8 are satisfied. Subject to the Non-Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Non-Revolving Credit Termination Date, and Borrower may not re-borrow under Advances as they are repaid.
Section 2.1(b). Revolving Credit. Subject to the terms and conditions hereof, Lender agrees to make a revolving credit facility (the “Revolving Credit”) available to Borrower for the sole purpose of providing working capital to fund (a) power purchases during seasonal differences in cash flow and (b) reserves as needed to support Power Purchase Agreements in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment at any time prior to the Revolving Credit Termination Date. The Revolving Credit will be disbursed in one or more advances (each, an “Advance” and, collectively, the “Advances”), provided that the conditions precedent to Advances specified in Section 8 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

Section 2.2. Advances. Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

Section 2.3. Promissory Notes. The Non-Revolving Credit will be evidenced by a Non-Revolving Promissory Note and the Revolving Credit will be evidenced by a Revolving Credit Promissory Note (each, a “Promissory Note”) made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as Exhibits C and D (respectively).

Section 2.4. Repayment.

(a) Non-Revolving Credit Termination Date. All Advances (including all outstanding principal and accrued but unpaid interest) under the Non-Revolving Credit shall be due and payable in full on the Non-Revolving Credit Termination Date. Until the Non-Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the applicable Promissory Note. Any Advances repaid may not be re-borrowed. Provided no default or Event of Default has occurred or is occurring, Borrower may request a one-time extension of the Non-Revolving Credit Termination date for a period of three (3) months by providing a written request to Lender no later than thirty (30) days prior to the Non-Revolving Credit Termination Date which is subject to Lender approval. Lender shall notify Borrower in writing of the extended Non-Revolving Credit Termination Date, if approved, not later than ten (10) days prior to the initial Non-Revolving Credit Termination Date.

(b) Revolving Credit Termination Date. All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the applicable Promissory Note. This is a revolving credit and any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date. Provided no default or Event of Default has occurred or is occurring, Borrower may exercise a one-time option to convert the outstanding Advances under the Revolving Credit to a term loan as provided below.
Section 3. Interest, Late Fees, Prepayments and Applications.

Section 3.1. Interest Payments.

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date beginning with the first Payment Date immediately following the initial Advance with all subsequent interest payments due and payable on each Payment Date thereafter. Interest on the Advances will be payable monthly in arrears on each Payment Date. Interest on any installment of principal will be due on a Payment Date provided however, that any principal amount that is not paid when due (whether by lapse of time, acceleration or otherwise) will be due and payable on demand. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under either or both of the Promissory Notes or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to _____________ of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates. All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

Section 3.3. Prepayments.

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Promissory Note, in whole or in part, together with
interest accrued on the principal amount prepaid, at its option and without premium, prior to the applicable Maturity Date or the Termination Date, as the case may be.

(b) Mandatory Prepayment. Borrower will, upon demand, prepay Advances at any time and to the extent that the outstanding principal amount of all Advances exceeds the Non-Revolving Credit Commitment or the Revolving Credit Commitment.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

Section 3.4. Place and Application of Payments and Collections. All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank
Loan Center
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Non-Revolving Credit or the Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender’s receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

Section 3.5. Notations. All Advances made and evidenced by a Promissory Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to such Promissory Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be prima facie evidence in any court or other proceeding brought to enforce such Promissory Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Promissory Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Promissory Note together with accrued interest thereon. Prior to any negotiation of the Promissory Note, Lender will record on a schedule thereto the status of all amounts evidenced by the Promissory Note and the rates of interest applicable thereto.

SECTION 4. FEES.

Section 4.1. Upon execution of this Agreement, Borrower shall pay to Lender fees for this Agreement as follows:

(a) Loan Fee. A Loan Fee in an amount equal to _____ of the Non-Revolving Credit Commitment _________ and a Loan Fee in an amount equal to _____ of the Revolving Credit Commitment _________.

{2158044.DOCX;}-5-
(b) Documentation Fee. A Documentation Fee in an amount equal to __________ for the Non-Revolving Credit Commitment and a Documentation Fee in an amount equal to __________ for the Non-Revolving Credit Commitment.

(c) Other Costs and Fees. Borrower shall be subject to and agrees to pay any and all other fees incurred by Lender associated with the origination and documentation of this Agreement including reasonable legal costs, provided that such legal costs shall not exceed __________.

SECTION 5. CONVERSION OF REVOLVING CREDIT ADVANCES TO TERM NOTE.

Section 5.1. Term Loan. Provided no Default or Event of Default has occurred and is continuing, Borrower shall have an option to convert outstanding balances under the Revolving Credit Commitment to a Term Loan as provided in Section 2.4(c) herein. The Term Loan will accrue interest at the Applicable Rate from and including the date on which the outstanding balances are converted to a Term Loan and will be evidenced by a single Term Note made, executed and delivered by Borrower in the form (with appropriate insertions) attached hereto as Exhibit E.

SECTION 6. COLLATERAL – REVOLVING CREDIT COMMITMENT.

Section 6.1. Debt Service Reserve Account. As a condition to Lender’s obligation to make any Advances under the Revolving Credit Commitment, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the “Debt Service Reserve Account”) with a balance of not less than $1,900,000.00 at any time. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

Section 6.2. Assignment of Debt Service Reserve Account. As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in the Debt Service Reserve Account and (i) all replacements, substitutions or proceeds thereof, (ii) all instruments and documents now or hereafter evidencing the Debt Service Reserve Account, (iii) all powers, options, rights, privileges and immunities pertaining to the Debt Service Reserve Account, including the right to make withdrawals therefrom, and (iv) all interest, income, profits and proceeds of the foregoing. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than $1,900,000.00 after giving effect to such withdrawal, (2) no
Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including without limitation, interest) then remaining in the Debt Service Reserve Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys’ fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Promissory Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under that certain Assignment of Deposit Account entered into as of the date hereof between Borrower and Lender shall be cumulative.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

Section 7.1. Organization and Qualification; Authority; Consents. Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute Promissory Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any Power Purchase Agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

Section 7.2. Legal Effect. This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally and the application of equitable remedies if equitable remedies are sought.

Section 7.3. Subsidiaries. Borrower has no Subsidiaries.
Section 7.4. Use of Proceeds. Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

Section 7.5. Financial Reports. Effective with the delivery to Lender of the financial statements required by Section 9.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

Section 7.6. Full Disclosure. The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

Section 7.7. Litigation. There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

Section 7.8. Good Title. Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

Section 7.9. Members. Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 7.10. Compliance with Laws. Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or
operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 7.11. Other Agreements. Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 7.12. No Default. No Default or Event of Default has occurred or is continuing.

SECTION 8. CONDITIONS PRECEDENT.

The obligation of Lender to make any Advance is subject to the following conditions precedent:

Section 8.1. All Advances. As of the time of the making of each Advance (including the initial Advance unless otherwise specified):

(a) each of the representations and warranties set forth in Section 7 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 7.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 9.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Promissory Notes, the Assignment of Debt Service Reserve Account and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

Section 8.2. Initial Advances under the Non-Revolving Credit Commitment and Revolving Credit Commitment.

8.2(a) Advances under the Non-Revolving Credit Commitment. At or prior to the making of the first Advance under the Non-Revolving Credit Commitment, the following conditions precedent must also be satisfied:

(a) Lender shall have received properly completed and executed originals of the following in form and substance approved by Lender:

i. this Agreement;
ii. fully executed Guarantees from the Non-Revolving Credit Guarantors;
iii. certified copies of the resolutions, action or minutes (as applicable) of the governing board of each Non-Revolving Credit Guarantor approving the transactions
contemplated by this Agreement to which such Non-Revolving Credit Guarantor is a party and the execution and delivery of such Guarantee to be delivered, and all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement and the Loan Documents contemplated therein and (ii) all other documents reasonably requested by Lender relating to the organization, existence and good standing of such Non-Revolving Credit Guarantor and authorization of the transactions contemplated hereby (including, but not limited to, a copy of the up-to-date constitutional documents of each Non-Revolving Credit Guarantor);

iv. favorable written legal opinion from Borrower’s counsel;

v. the Request for Advance in the form of Exhibit E;

vi. each of the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;

vii. an incumbency certificate containing the name, title and genuine signatures of each of Borrower’s Authorized Representatives;

viii. evidence of Borrower’s good standing in the state of California;

ix. payment by Borrower of the Loan Fee and all payments and expenses required to be paid by Borrower pursuant to Sections 4.1 and 11.4(a) of this Agreement;

x. a schedule, substantially in the form of Schedule 1 listing all of Borrower’s outstanding Indebtedness for Borrowed Money;

xi. copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;

xii. a subordination agreement on Lender form executed by each of the City of Mountain View and the City of Sunnyvale; and

xiii. evidence of operating approval from the CPUC and CAL ISO.

8.2(b) Advances under the Revolving Credit Commitment. At or prior to the making of the first Advance under the Revolving Credit Commitment, the following conditions precedent must also be satisfied:

(i) the first Advance under the Non-Revolving Credit Agreement has occurred;

(ii) The Launch Date has been established and the initial advance (other than the advance to fund the Debt Service Reserve Account) under the Revolving Credit Commitment is requested no earlier than four (4) months prior to the Launch Date;

(iii) Borrower shall have delivered to Lender executed copies of the Power Purchase Agreements;

(iv) The Lockbox Account shall have been established with Lender;
(v) The Debt Service Reserve Account shall have been established and funded with Lender;

(vi) The Advance is either a) the Debt Service Reserve Advance, b) a PPA Advance or c) a Working Capital Advance as provided in Section 8.2(c) below;

(vii) For any Advance other than the Debt Service Reserve Advance or PPA Advance, a subordination agreement on Lender form executed by all of the JPA Members to whom the subordinated indebtedness is payable; and

(viii) Any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

8.2 (c) Permitted Revolving Credit Advances. The following Advances are permitted under the Revolving Credit Commitment:

(i) Debt Service Reserve Advance. The Debt Service Reserve Advance shall be in an amount equal to One Million, Nine Hundred Thousand and no/100 Dollars ($1,900,000) and will be the first Advance from the Revolving Credit Commitment. The proceeds from the Debt Service Reserve Advance shall be deposited into the Debt Service Reserve Account.

(ii) PPA Advance. PPA Advances may be requested for the sole purpose of funding reserves in connection with a Power Purchase Agreement with the proceeds from each PPA Advance being deposited into the Lockbox Account established with Lender. The sum of all PPA Advances may not exceed Five Million and no/100 Dollars ($5,000,000). Each PPA Advance shall be requested in substantially the form of Exhibit G.

(iii) Working Capital Advance. Working Capital Advances may be requested for the sole purpose of bridging seasonal gaps between payment obligations due under the Power Purchase Agreements and reductions in cash flow due to lower billing rates in winter months. Working Capital Advances are to fund power purchases only. Each Working Capital Advance shall be requested in substantially the form of Exhibit G with proceeds wired by Lender directly to the power purchase provider.
SECTION 9. COVENANTS.

Borrower agrees that, so long as any credit is available to or in use by Borrower hereunder, except to the extent compliance in any case or cases is waived in writing by Lender:

Section 9.1. Maintenance of Business. Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

Section 9.2. Financial Reports. Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, shall furnish to Lender:

(a) as soon as available, and in any event within fifteen (15) days after the close of each month, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within thirty (30) days after the close of each fiscal quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(iii) as soon as available, and in any event no later than January 31st after each Fiscal Year End, a copy of the audited balance sheet of Borrower as of the last day of the Fiscal Year End and the statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower’s independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;
(b) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower’s operations and financial affairs given to it by its independent public accountants;

(c) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely effect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(d) promptly after the request therefore, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to this Section 9.2 shall be accompanied by a written certificate signed by the chief financial officer of Borrower to the effect that to the best of such officer’s knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

Section 9.3. Maintenance of Debt Service Reserve Account. Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 6.

Section 9.4. Primary Depository Relationship. Borrower shall maintain its primary business banking deposit account relationship with Lender for so long as any amounts under this Agreement or any Promissory Note remain outstanding. In the event that this condition is not met, as determined by Lender, the Applicable Rate (or the Default Rate, if applicable) and any commissions charge on any outstanding Promissory Note will immediately increase by an additional 2.00 percentage points.

Section 9.5. Debt Service Coverage Ratio. Borrower shall maintain a minimum Debt Service Coverage Ratio (“DSCR”) not at any time less than 1.25:1.00, measured annually as of each Fiscal Year End beginning with September 30, 2017. DSCR is calculated as Cash Flow divided by Debt Service.

“Cash Flow” is hereby defined as net profit after tax plus depreciation, amortization and interest expense, for the twelve (12) month period ending the most recent fiscal year end.

“Debt Service” is hereby defined as interest expense during the calculated period plus current maturities of long term debt reported at the beginning of the calculated period.

Section 9.6. Unrestricted Tangible Net Assets. Borrower to maintain minimum Unrestricted Tangible Net Assets not at any time less than Two Million and 00/100 Dollars ($2,000,000), measured annually as of each Fiscal Year End.
“Unrestricted Tangible Net Assets” is defined as total assets less temporarily and permanently restricted assets, less any intangible assets, less total liabilities.

Section 9.7. Positive Change in Net Assets. Borrower will show a minimum positive change in Unrestricted Tangible Net Assets of no less than One and 00/100 Dollars ($1.00), measured annually for the twelve month period beginning the first day after Fiscal Year End through the Fiscal Year End.

Section 9.8. Revenue Report and Minimum Revenue Requirements. Borrower shall provide Lender with a revenue report prepared by Borrower in accordance with accrual accounting standards. The revenue report shall be delivered within thirty (30) days after each fiscal quarter end with revenues projected through the end of the most recent fiscal quarter to include both monthly revenues and cumulative revenues for the measurement period. The following are the quarterly Minimum Revenue Requirements. The Minimum Revenue Requirements shall represent approximately 80% of Pro-forma Revenues on a cumulative basis:

<table>
<thead>
<tr>
<th>Reporting Period</th>
<th>Cumulative Projections Through</th>
<th>Minimum Revenue Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/30/2017 – 09/30/2017</td>
<td>09/30/2017</td>
<td>$17,000,000</td>
</tr>
<tr>
<td>10/01/2017 – 12/31/2017</td>
<td>12/31/2017</td>
<td>$63,000,000</td>
</tr>
<tr>
<td>10/01/2017 – 03/31/2018</td>
<td>03/31/2018</td>
<td>$41,000,000</td>
</tr>
<tr>
<td>10/01/2017 – 06/30/2018</td>
<td>06/30/2018</td>
<td>$114,000,000</td>
</tr>
<tr>
<td>10/01/2017 – 09/30/2018</td>
<td>09/30/2018</td>
<td>$162,000,000</td>
</tr>
<tr>
<td>10/01/2018 – 12/31/2018</td>
<td>12/31/2018</td>
<td>$210,000,000</td>
</tr>
</tbody>
</table>

Section 9.9. Inspection. Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event, no more than six (6) times during any twelve (12) month period so long as no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower each authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

Section 9.10. Liens. Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower or any Subsidiary; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker’s compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of
business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics’, workmen’s, materialmen’s, landlords’, carriers’, or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of $200,000 at any one time outstanding;

(d) the Liens identified on Schedule 1 hereto;

(e) the Liens pursuant to an approved Power Purchase Agreement; and

(f) the Liens established by the Loan Documents or otherwise in favor of Lender.

The Liens described in clauses (a) through (f) of this Section 9.10 are collectively referred to in this Agreement as the “Permitted Liens.”

Section 9.11. Investments, Acquisitions, Loans, Advances and Guaranties. Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

Section 9.12. Compliance with Laws. Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

Section 9.13. Burdensome Contracts With Members. Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.
Section 9.14. Notices of Claims and Litigation. Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower’s financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

Section 9.15. Other Agreements. Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any such agreements.

Section 9.16. Performance. Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Promissory Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

Section 9.17. Compliance Certificates. Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower’s chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Section 9.18. Fiscal Year. Borrower shall not change its fiscal year without the prior written consent of Lender.

Section 9.19. Indebtedness for Borrowed Money. As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money, except as set forth on Schedule 1. Except as disclosed on Schedule 1, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

Section 9.20. No Payments on Subordinated Amounts. So long as any Obligations remain outstanding, Borrower shall not, without the prior written consent of Lender, make any payment on or any distribution with respect to Indebtedness for Borrowed Money to any JPA Member.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES.

Section 10.1. Events of Default. Any one or more of the following will constitute an “Event of Default” hereunder:

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under a Promissory Note, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or
(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars ($1,000,000) is entered or filed against Borrower or any of Borrower’s Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower’s Properties, Borrower’s ability to repay the Non-Revolving Credit, the Revolving Credit or Borrower’s ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower’s financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower’s obligations under this Agreement is materially impaired; or

(g) Borrower (i) takes any steps to effect a Winding-Up, (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due; or

(h) a custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismitted or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due.

Section 10.2. Non-Insolvency Default Remedies. Upon the occurrence of any Event of Default described in clauses (a) through (g) of Section 10.1, Lender or any permitted holder of any Promissory Note may, by notice to Borrower, take any of the following actions:

(a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;

(b) declare all Advances and all indebtedness under the Promissory Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other
Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

Section 10.3. Insolvency Default Remedies. Upon the occurrence of any Event of Default described in Section 10.1(h), all Advances and all indebtedness under the Promissory Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

SECTION 11. MISCELLANEOUS.

Section 11.1. Holidays. If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

Section 11.2. No Waiver, Cumulative Remedies. No delay or failure on the part of Lender or on the part of the holder of any Promissory Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Promissory Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 11.3. Amendments, Etc. No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.
Section 11.4. Costs and Expenses.

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender, if any, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 4.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys’ fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

Section 11.5. Indemnity. Whether or not the transactions contemplated hereby shall be consummated, Borrower shall indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an “Indemnified Person”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys’ costs and expert witnesses’ fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the “Indemnified Liabilities”); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower’s obligation and duty hereunder to indemnify and hold harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.
The obligations of Borrower in this Section 11.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person’s sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 11.5 shall be paid within thirty (30) days after demand.

Section 11.6. Right of Set Off. To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower’s accounts with Lender (whether checking, savings, or some other account) other than the Lockbox Account. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

Section 11.7. Survival of Representations. All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 11.8. Notices. Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier, email or telecopy) and will be given to the relevant party at its address, email address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device (including electronic mail) capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Silicon Valley Clean Energy Authority

Attention: Chief Executive Officer

With a copy (not constituting notice) to:

[LEGAL]
[ADDRESS]
Attention: [ ]

[remainder of page intentionally left blank]
To Lender at:

River City Bank
2485 Natomas Park Drive, Suite 400
Sacramento, CA  95833
Telephone:  (916) 567-2700
Telecopy:    (916) 567-2780
Attention:  Alice Harris
Loan Center

Each such notice, request or other communication will be effective (i) if given by telex, when such telex is transmitted to the telex number or email address specified in this Section and a confirmation of such telex or email has been received by the sender, (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 11.8: provided that any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower’s current address.

Section 11.9.  Headings.  Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

Section 11.10.  Severability of Provisions.  Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 11.11.  Counterparts.  This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

Section 11.12.  Assignments, Binding Nature, Governing Law, Etc.  This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Promissory Note.  This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws.  This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.  Borrower may not assign its rights hereunder without the written consent of Lender.  Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.
Section 11.13. Submission to Jurisdiction; Waiver of Jury Trial. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

Section 11.14. Time is of the Essence. Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

Section 11.15. Consent to Loan Participation. Borrower agrees and consents to Lender’s sale or transfer, whether now or later, of one or more participation interests in the Non-Revolving Credit or the Revolving Credit to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Non-Revolving Credit and the Revolving Credit such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in a Promissory Note and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower’s obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Promissory Note. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Section 11.16. No Recourse Against Constituent Members of Borrower. Borrower 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 the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Promissory Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower’s constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

[remainder of page intentionally left blank]
Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth.

Executed and delivered in Sacramento, California, as of the first date written above.

Silicon Valley Clean Energy Authority

By: ______________________________
   [         ]
   Chief Executive Officer

RIVER CITY BANK

By: ______________________________
Name: ___________________________
Its: _____________________________
## SCHEDULE 1

### Funding of Initial Costs

<table>
<thead>
<tr>
<th>Contributing Party</th>
<th>Amount Phase 1</th>
<th>Amount Phase 2 &amp; 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campbell</td>
<td>$100,000</td>
<td></td>
</tr>
<tr>
<td>Cupertino</td>
<td>$170,000</td>
<td>$350,000</td>
</tr>
<tr>
<td>Gilroy</td>
<td></td>
<td>$100,000</td>
</tr>
<tr>
<td>Los Altos</td>
<td></td>
<td>$100,000</td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td></td>
<td>$25,000</td>
</tr>
<tr>
<td>Los Gatos</td>
<td></td>
<td>$100,000</td>
</tr>
<tr>
<td>Monte Sereno</td>
<td></td>
<td>$25,000</td>
</tr>
<tr>
<td>Morgan Hill</td>
<td></td>
<td>$100,000</td>
</tr>
<tr>
<td>Mountain View</td>
<td>$170,000</td>
<td>$350,000</td>
</tr>
<tr>
<td>Santa Clara County (Unincorporated)</td>
<td>$170,000</td>
<td>$350,000</td>
</tr>
<tr>
<td>Saratoga</td>
<td></td>
<td>$100,000</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>$170,000</td>
<td>$350,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$680,000</strong></td>
<td><strong>$2,050,000</strong></td>
</tr>
</tbody>
</table>
EXHIBIT A

Definitions

“Advance” and “Advances” is defined in Section 2.1.

“Agreement” means this Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

“Applicable Rate” means a variable rate of interest equal to the One-Month LIBOR plus the Margin. The Applicable Rate is subject to increase as provided in Section 9.4.

“Authorized Representative” means those persons shown on the list of officers provided by Borrower pursuant to Section 8.2(a)(vii), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

“Borrower” is defined in the introductory paragraph.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

“CPUC” means the California Public Utilities Commission.

“CAL ISO” means California ISO, the independent grid operator.

“Capital Lease” means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

“Capitalized Lease Obligation” means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

“Debtor Relief Laws” means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“Default Rate” means the Applicable Rate plus ____________________.

“Dollars and $” mean lawful money of the United States.
“Event of Default” is defined in Section 10.1.

“Fiscal Year End” means September 30th.

“GAAP” means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

“Guarantee” means a guarantee substantially in the form of Exhibit B executed by the Non-Revolving Credit Guarantors in favor of Lender.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

“Indebtedness for Borrowed Money” means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

“Indemnified Liabilities” is defined in Section 11.5.

“Indemnified Person” is defined in Section 11.5.

“Initial Rate Set Date” means the date of issuance of each Promissory Note at which time Lender will determine the One-Month LIBOR which shall be in effect until the next Rate Change Date.

“JPA Members” mean the City of Campbell, City of Cupertino, City of Gilroy, City of Los Altos, Town of Los Altos Hills, Town of Los Gatos, City of Monte Sereno, City of Morgan Hill, City of Mountain View, County of Santa Clara (Unincorporated Area), City of Saratoga and the City of Sunnyvale.

“Joint Powers Agreement” means the Joint Powers Agreement of Borrower effective as of March 31, 2016, and as amended from time to time.

“Launch Date” means April 3, 2017 and is the date on which Borrower begins revenue generation.
“Lender” is defined in the introductory paragraph.

“Lien” means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“Loan Documents” means this Agreement, the Promissory Notes, the Assignment of Debt Service Reserve Account, the Subordination Agreement, the Guarantees and all other documents, certificates, instruments and agreements relating to the foregoing or otherwise executed by Borrower in connection with the Non-Revolving Credit and/or Revolving Credit.

“Loan Fee” means _______________ of each of the Non-Revolving Credit Commitment and the Revolving Credit Commitment.

“Lockbox Account” means the lockbox agreement and lockbox account established with Lender, as custodian into which all revenues generated by Borrower must be deposited.

“Maintenance and Operation Costs” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and the Consulting Engineer, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

“Margin” means, percentage points per annum as adjusted for any maximum or minimum rate limitations as provided in the Loan Documents above the One-Month LIBOR. The ‘Non-Revolving Credit Margin’ is equal to _______ and the ‘Revolving Credit Margin’ is equal to _______.

“Maturity Date” means, for any Promissory Note, the date so specified in such Promissory Note as the Maturity Date.

“Non-Revolving Credit” is defined in Section 2.1(a).
“Non-Revolving Credit Commitment” means, at any time of determination, an amount equal to $2,000,000.00 less the aggregate principal amount of Advances made by Lender under the Non-Revolving Credit.

“Non-Revolving Credit Guarantors” means the City of Mountain View, the City of Sunnyvale, the County of Santa Clara and the City of Gilroy.

“Non-Revolving Credit Termination Date” means the date that is twelve (12) months from the date of this Agreement, unless extended in accordance with Section 2.4(a).

“Obligations” means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees, charges, expenses, attorneys’ fees and accountants’ fees chargeable to Borrower or payable by Borrower thereunder.

“One-Month LIBOR” means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the One-Month LIBOR rate as posted on Bankrate.com (or, if such rate becomes unavailable to Lender, a substitute rate based on an index selected by Lender in its sole discretion) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

“Payment Date” means, other than the Termination Date or any Maturity Date, the first day of each calendar month.

“Permitted Liens” is defined in Section 9.10.

“Person” means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Power Purchase Agreement” means (i) that certain Master Power Purchase and Sale Agreement, dated as of [ ], between [ ]Energy and Borrower, (ii) the [ ]Security Agreement, (iii) the Collateral Account Agreement, and (iv) any and all amendments, modifications, and restatements of the documents referred to in the preceding clauses (i) through (iii).

“Pro-forma Revenues” means the projected revenues provided by Borrower to Lender dated as of September 7, 2016.

“Rate Change Date” means the first calendar day of each calendar month.
“Related Parties” means, with respect to any Person, such Person’s affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s affiliates.

“Responsible Officer” means { }.

“Revolving Credit” is defined in Section 2.1(b).

“Revolving Credit Commitment” means, at any time of determination, an amount equal to $18,000,000.00 less the aggregate principal amount of Advances made by Lender under the Revolving Credit.

“Revolving Credit Termination Date” means the date that is twelve (12) months from the date of this Agreement.

“Subordination Agreement” means a subordination agreement substantially in the form of Exhibit H executed by each member of the Joint Power Authority (“JPA”) affirming the subordination of the $2.73MM loan between the JPA Members and Borrower.

“System” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“Term Loan” means the conversion of outstanding Revolving Line of Credit Advances as provided in Section 2.4(c).

“UCC” means the Uniform Commercial Code as enacted in the State of California.

“Winding-Up” means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person’s Properties.
EXHIBIT B
NON-REVOLVING CREDIT GUARANTY

This NON-REVOLVING CREDIT GUARANTY is made effective as of _______ ("Guaranty") by the City of Mountain View, the City of Sunnyvale, the County of Santa Clara and the City of Gilroy (each a “Non-Revolving Credit Guarantor” and collectively “Non-Revolving Credit Guarantors”), in favor and for the benefit of Lender under the Credit Agreement (each as hereinafter defined).

RECITALS

A. Pursuant to a certain credit agreement dated as of November ____, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof in effect, the “Credit Agreement”) by and between Silicon Valley Clean Energy Authority (“Borrower”) and River City Bank (“Lender”), Lender has agreed to make certain Advances to Borrower. Capitalized terms not defined herein have the meanings ascribed to them in the Credit Agreement.

B. It is a requirement under Section 8.2(a)(ii) of the Credit Agreement that each Non-Revolving Credit Guarantor shall execute and deliver this Guaranty and that this Guaranty shall be in full force and effect.

C. This Guaranty is given by Non-Revolving Credit Guarantors in favor of Lender to guaranty all of the Obligations of Borrower under the Non-Revolving Credit in accordance with the terms of the Credit Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Non-Revolving Credit Guarantors hereby agree as follows:

1. Guaranty. (a) To induce Lender to make the Advances upon the terms and conditions set forth in the Credit Agreement, and in consideration thereof, each Non-Revolving Credit Guarantor hereby unconditionally and irrevocably severally (based on each Non-Revolving Credit Guarantor’s percentage responsibility set forth on Exhibit A attached hereto (each a “Guarantor’s Share”)) (i) guarantees to Lender and its successors, transferees and assigns, the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) and at all times thereafter of the Obligations of Borrower (including amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Federal Bankruptcy Code of 1978, as amended, or any state bankruptcy statute) under the Non-Revolving Credit; and (ii) agrees to pay any and all reasonable expenses (including reasonable attorneys’ fees and disbursements and expert witnesses’ fees and disbursements) which may be paid or incurred by Lender in enforcing any rights with respect to, or collecting, any or all of the Obligations under the Non-Revolving

{2158044.DOCX;}
Credit and/or enforcing any rights with respect to, or collecting against, such Non-Revolving Credit Guarantor under this Guaranty (collectively, the “Guaranteed Obligations”).

(b) Each Non-Revolving Credit Guarantor agrees that this Guaranty constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be had by Lender to any security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person.

(c) No payment or payments made by Borrower or any other Person or received or collected by Lender from any other Person by virtue of any action or proceeding or any set off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Non-Revolving Credit Guarantor hereunder which shall, notwithstanding any such payment or payments other than payments made to Lender by a Non-Revolving Credit Guarantor or payments received or collected by Lender from a Non-Revolving Credit Guarantor, remain liable for such Guarantor’s Share of the Guaranteed Obligations until the Guaranteed Obligations are indefeasibly paid in full in cash or cash equivalents.

(d) Each Non-Revolving Credit Guarantor understands, agrees and confirms that this is a guaranty of payment when due and not of collection and that Lender may, from time to time, enforce this Guaranty up to the full amount of each Guarantor’s Share of the Guaranteed Obligations owed to Lender without proceeding against any other Person, against any security for the Guaranteed Obligations, against any other guarantor or under any other guaranty covering the Guaranteed Obligations.

2. Waiver by Non-Revolving Credit Guarantor. Until the payment and satisfaction in full of all Guaranteed Obligations and the expiration or termination of any commitment to lend by Lender under the Credit Agreement, each Non-Revolving Credit Guarantor hereby waives absolutely and irrevocably any claim which it may have against Borrower or any or its respective Affiliates by reason of any payment to Lender, or to any other Person pursuant to or in respect of this Guaranty, including any claims by way of subrogation, contribution, reimbursement, indemnity or otherwise.

Each Non-Revolving Credit Guarantor further agrees that such Non-Revolving Credit Guarantor’s liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of such Non-Revolving Credit Guarantor of the time for payment of interest or principal under the Credit Agreement or by any forbearance or delay in collecting interest or principal under the Credit Agreement, or by any waiver by Lender under the Credit Agreement or any other Loan Documents, or by Lender’s failure or election not to pursue any other remedies it may have against Borrower or such Non-Revolving Credit Guarantor, or by any change or modification in the Credit Agreement or any other Loan Document, or by the acceptance by Lender of any additional security or any increase, substitution or change therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein, except that payment in full of the indebtedness shall automatically release such Non-Revolving Credit Guarantor.
Guarantor of its Obligations under this Guaranty, or by the application of payments received from any source to the payment of any obligation other than the indebtedness even though Lender might lawfully have elected to apply such payments to any part or all of the indebtedness (in which case such Non-Revolving Credit Guarantor will be automatically released), or by the failure or invalidity of, or any defect in, the Credit Agreement, or by any legal disability or other defense of Borrower, or by the cessation, limitation or termination from any cause whatsoever of any of the Obligations under the Credit Agreement, except upon payment in full of the indebtedness (in which case such Non-Revolving Credit Guarantor will be automatically released), or by the application by Borrower of the proceeds of the Advances for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Non-Revolving Credit Guarantors, it being the intent hereof that each Non-Revolving Credit Guarantor shall remain liable for its ratable share of Obligations hereunder to the extent of each Guarantor’s Obligations provided herein, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Each Non-Revolving Credit Guarantor hereby waives any and all rights or defenses based on, and understands and agrees that such Non-Revolving Credit Guarantor’s liability as guarantor shall not be impaired or affected by, an election of remedies by Lender, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Non-Revolving Credit Guarantor’s rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise, or the foreclosure of any of the security for the Advances, including without limitation the security described in any Security Agreement, or each Non-Revolving Credit Guarantor’s right to a fair value hearing under Section 580a of the California Code of Civil Procedure, it being intended that this Guaranty shall survive the realization upon any of the security for the Advances, including without limitation the security described in the Security Agreement, including without limitation non-judicial foreclosure, where applicable, and notwithstanding any defense, right, or claim that any such foreclosure satisfied the obligations secured thereby. Each Non-Revolving Credit Guarantor agrees that the payment of all sums payable under the Credit Agreement or any of the other Loan Documents or any part thereof or other act which tolls any statute of limitations applicable to the Credit Agreement or the other Loan Documents shall similarly operate to toll the statute of limitations applicable to such Non-Revolving Credit Guarantor’s liability hereunder. Without limiting the generality of the foregoing or any other provision hereof, each Non-Revolving Credit Guarantor expressly waives to the extent permitted by law any and all rights and defenses that such Non-Revolving Credit Guarantor may have if Borrower’s debt is secured by real property. This means, among other things: (1) Lender may collect from a Non-Revolving Credit Guarantor without first foreclosing on any security for the Advances (whether such security is real or personal property) pledged by Borrower; and (2) if Lender forecloses on any real property security pledged by Borrower (including without limitation the real property described in a Deed of Trust), (A) the amount of the Indebtedness may be reduced only by the price for which that security is sold at the foreclosure sale, even if the security is worth more than the sale price, and (B) Lender may collect from a Non-Revolving Credit Guarantor even if Lender, by foreclosing on the real property security, has destroyed any right such Non-Revolving Credit Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses such Non-Revolving Credit Guarantor may have if Borrower’s debt is secured by
real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure, and/or Sections 2787 to 2855, inclusive, 2899 and 3433 of the California Civil Code, or any of such sections. Each Non-Revolving Credit Guarantor further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Credit Agreement, Loan Agreement, Security Agreement or other Loan Documents, and may waive or release any provision or provisions of the Credit Agreement, Loan Agreement, Security Agreement and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender’s rights hereunder or such Non-Revolving Credit Guarantor’s obligations hereunder.

3. Consent by Non-Revolving Credit Guarantor. Each Non-Revolving Credit Guarantor hereby consents and agrees that, without the necessity of any reservation of rights against such Non-Revolving Credit Guarantor and without notice to or further assent by such Non-Revolving Credit Guarantor, any demand for payment of any of the Guaranteed Obligations made by Lender may be rescinded by Lender and any of the Guaranteed Obligations continued, and the Guaranteed Obligations, or the liability of any other party upon or for any part thereto, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Lender; and the Credit Agreement or other guaranty or documents in connection therewith, or any of them, may be amended, modified, supplemented or terminated, in whole or in part, as Lender may deem advisable from time to time; and any guaranty or right of offset may be sold, exchanged, waived, surrendered or released, all without the necessity of any reservation of rights against any Non-Revolving Credit Guarantor and without notice to or further assent by any Non-Revolving Credit Guarantor, which will remain bound hereunder, notwithstanding any such renewal, extension, modification, acceleration, compromise, amendment, supplement, termination, sale, exchange, waiver, surrender or release. Lender shall have no obligation to protect, secure, perfect or insure any property at any time held as security for the Guaranteed Obligations. When making any demand hereunder against a Non-Revolving Credit Guarantor, Lender may, but shall be under no obligation to, make a similar demand on Borrower, any other Person who at any time guarantees or pledges any assets to secure the Guaranteed Obligations, or any one or more of them (a “Credit Party”) or any such other guarantor, and any failure by Lender to make any such demand or to collect any payments from such other Credit Party or any such other guarantor or any release of such other Credit Party or any such other guarantor or of a Non-Revolving Credit Guarantor’s obligations or liabilities hereunder shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of Lender against a Non-Revolving Credit Guarantor hereunder. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

4. Waivers; Successors and Assigns. Each Non-Revolving Credit Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Lender upon this Guaranty or acceptance of
this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty, and all dealings between a Non-Revolving Credit Guarantor and any other Credit Party, on the one hand, and Lender, on the other hand, shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty. Each Non-Revolving Credit Guarantor waives diligence, presentment, protest, demand for payment and notice of default or non-payment to or upon any Credit Party or a Non-Revolving Credit Guarantor with respect to the Guaranteed Obligations. This Guaranty shall be construed as a continuing, absolute and unconditional guaranty of payment without regard to the validity, regularity or enforceability of the Credit Agreement, the other Loan Documents, any of the Guaranteed Obligations or any guaranty therefor or right of offset with respect thereto at any time or from time to time held by Lender and without regard to any defense (other than the defense of payment), set-off or counterclaim which may at any time be available to or be asserted by any Credit Party against Lender, or by any other circumstance whatsoever (with or without notice to or knowledge of any Non-Revolving Credit Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Guaranteed Obligations, or of a Non-Revolving Credit Guarantor under this Guaranty, in bankruptcy or in any other instance, and the obligations and liabilities of such Non-Revolving Credit Guarantor hereunder shall not be conditioned or contingent upon the pursuit by Lender or any other Person at any time of any right or remedy against any Credit Party or against any other Person which may be or become liable in respect of all or any part or the Guaranteed Obligations or against any collateral security or Guaranty therefor or right of offset with respect thereto. This Guaranty shall be a primary obligation of each Non-Revolving Credit Guarantor to secure the payment of the Guaranteed Obligations and Lender shall have no obligation whatsoever to seek payment of the Guaranteed Obligations from Borrower in the event an Event of Default has occurred and is continuing. This Guaranty shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon each Non-Revolving Credit Guarantor and the successors and assigns thereof, and shall inure to the benefit of Lender, and their respective successors, transferees and assigns (including each holder from time to time of Guaranteed Obligations), until all of the Guaranteed Obligations and the obligations of each Non-Revolving Credit Guarantor under this Guaranty shall have been satisfied by indefeasible payment in full in cash or cash equivalents, notwithstanding that from time to time during the term of the Credit Agreement any Credit Party may be released from all of its Guaranteed Obligations thereunder.

5. Effectiveness; Reinstatement. This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Credit Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of; or trustee or similar officer for, any Credit Party or any substantial part of its property, or otherwise, all as though such payments had not been made.

6. Payments of Guaranteed Obligations. Each Non-Revolving Credit Guarantor hereby guarantees that its Guarantor’s Share of the Guaranteed Obligations will be paid for the benefit of Lender without set-off or counterclaim in lawful currency of the United States of America.
America at the office of Lender located at 2485 Natomas Park Drive, Sacramento, California 95833. Each Non-Revolving Credit Guarantor shall make any payments required hereunder within five (5) business days of receipt of written notice thereof from Lender; provided, however, that such written notice may only be sent after the occurrence and during the continuation of an Event of Default and provided, further, however, that the failure of Lender to give such notice shall not affect such Non-Revolving Credit Guarantor’s obligations hereunder.

7. Representations and Warranties. To induce Lender to enter into the Credit Agreement and to make the Advances thereunder, each Non-Revolving Credit Guarantor represents and warrants to Lender that, as to such Non-Revolving Credit Guarantor, the following statements are true, correct and complete on and as of the date hereof:

(a) Organization and Qualification; Authority; Consents. Such Non-Revolving Credit Guarantor is a duly organized, validly existing under and operating pursuant to the laws of the State of California, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Such Non-Revolving Credit Guarantor has full right and authority to enter into this Guaranty and to perform each and all of the matters and things herein provided for; and this Guaranty does not, nor does the performance or observance by such Non-Revolving Credit Guarantor of any of the matters or things herein or therein provided for, contravene any provision of law or any organizational document of such Non-Revolving Credit Guarantor or any covenant, indenture or agreement of or affecting such Non-Revolving Credit Guarantor or any of its Properties. The execution, delivery, performance and observance by such Non-Revolving Credit Guarantor of this Guaranty and any other instruments and documents executed by such Non-Revolving Credit Guarantor in connection with this Guaranty do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

(b) Legal Effect. This Guaranty constitutes a legal, valid and binding agreement of such Non-Revolving Credit Guarantor, enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally and the application of equitable remedies if equitable remedies are sought.

(c) Litigation. There is no litigation or governmental proceeding pending, nor to the knowledge of such Non-Revolving Credit Guarantor threatened in writing, against such Non-Revolving Credit Guarantor which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor.

(d) Compliance with Laws. Such Non-Revolving Credit Guarantor is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and
regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor. Such Non-Revolving Credit Guarantor has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor.

(e) Other Agreements. Such Non-Revolving Credit Guarantor is not in default under the terms of any covenant, indenture or agreement of or affecting such Non-Revolving Credit Guarantor or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor.

8. Covenants. Each Non-Revolving Credit Guarantor agrees that, as to such Non-Revolving Credit Guarantor, so long as any credit is available to or in use by Borrower under the Credit Agreement, except to the extent compliance in any case or cases is waived in writing by Lender:

(a) Financial Reports. Such Non-Revolving Credit Guarantor shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives any publicly available information respecting the business and financial condition of such Non-Revolving Credit Guarantor as Lender may reasonably request.

(b) Compliance with Laws. Such Non-Revolving Credit Guarantor shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of such Non-Revolving Credit Guarantor or could result in a Lien upon any of its Property.

(c) Notices of Claims and Litigation. Such Non-Revolving Credit Guarantor shall promptly inform Lender in writing of (1) all material adverse changes in such Non-Revolving Credit Guarantor’s financial condition and (2) all existing litigation and all written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting such Non-Revolving Credit Guarantor which could materially affect the financial condition of such Non-Revolving Credit Guarantor.

9. Expenses. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors’ rights and involving a claim under this Guaranty; or (c) an attorney is retained to represent Lender in
any proceedings whatsoever in connection with this Guaranty and Lender prevails in any such proceedings, then Non-Revolving Credit Guarantors shall pay to Lender (as the case may be) upon demand such Non-Revolving Credit Guarantor’s Share of all reasonable attorney’s fees, costs and expenses incurred in connection therewith (all of which are referred to herein as “Enforcement Costs”), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

10. No Waiver. No failure to exercise and no delay in exercising, on the part of Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

11. Notices. All notices, demands, instructions or other communications required or permitted to be given to or made upon any party hereto shall be given in accordance with the provisions of the Credit Agreement and at the address set forth therein or as provided on the signature page hereof.

12. Amendments, Waivers, etc. No provision of this Guaranty shall be waived, amended, terminated or supplemented except by a written instrument executed by Non-Revolving Credit Guarantors and Lender.

13. GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

14. CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST A NON-REVOLVING CREDIT GUARANTOR WITH RESPECT TO THIS GUARANTY AGREEMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SACRAMENTO, CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS GUARANTY AGREEMENT EACH NON-REVOLVING CREDIT GUARANTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

15. Counterparts. This Guaranty and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate
counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[remainder of page intentionally left blank]
City of Mountain View

By: _____________________________
Its: _____________________________

FINANCIAL APPROVAL:

________________________________
Finance and Administrative Services Director

APPROVED AS TO FORM:

________________________________
City Attorney

Notices shall be provided to:

Finance and Administrative Services Director
City of Mountain View
P.O. Box 7540
Mountain View, CA 94039-7540

County of Santa Clara

By: _____________________________
Its: _____________________________

City of Gilroy

By: _____________________________
Its: _____________________________

City of Sunnyvale

By: _____________________________
Its: _____________________________

APPROVED AS TO FORM:

________________________________
City Attorney
EXHIBIT A

GUARANTOR’S SHARE

<table>
<thead>
<tr>
<th>Guarantor</th>
<th>Guarantor’s Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Mountain View</td>
<td>24.0%</td>
</tr>
<tr>
<td>City of Sunnyvale</td>
<td>51.0%</td>
</tr>
<tr>
<td>County of Santa Clara</td>
<td>14.0%</td>
</tr>
<tr>
<td>City of Gilroy</td>
<td>11.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
EXHIBIT C

NON-REVOLVING PROMISSORY NOTE

$2,000,000.00 Date: __________

FOR VALUE RECEIVED, SILICON VALLEY CLEAN ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. (“Borrower”), promises to pay to the order of RIVER CITY BANK (“Lender”) the lesser of (a) the principal sum of TWO MILLION and/100 DOLLARS ($2,000,000.00), or (b) the aggregate unpaid principal amount of Advances made to Borrower by Lender under the Non-Revolving Promissory Note (this “Note”), pursuant to the terms of that certain Credit Agreement (the “Credit Agreement”) dated as of [ ], between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Note shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the date of each Advance, or (b) December 1, 2016, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Non-Revolving Credit Termination Date as may be extended pursuant to Section 2.4(a) of the Credit Agreement.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender’s option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

{2158044.DOCX;}
This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys’ fees and expert witnesses’ fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender’s rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender’s security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ____________________________
   Executive Officer

By: ____________________________
   Chairman of the Board
EXHIBIT D

REVOLVING CREDIT PROMISSORY NOTE

$18,000,000.00 Date:________

FOR VALUE RECEIVED, SILICON VALLEY CLEAN ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. (“Borrower”), promises to pay to the order of RIVER CITY BANK (“Lender”) the principal sum of EIGHTEEN MILLION and /100 DOLLARS ($18,000,000.00), pursuant to the terms of that certain Credit Agreement (the “Credit Agreement”) dated as of [ ], between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Revolving Credit Promissory Note (this “Note”) shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the date of each Advance, or (b) December 1, 2016, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date. Under Section 5 of the Credit Agreement and subject to the conditions set forth therein, no later than 30 days prior to the Revolving Credit Termination Date, Borrower may request that any amounts due and payable hereunder be converted into a Term Loan evidenced by a Term Note.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender’s option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.
This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys’ fees and expert witnesses’ fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender’s rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender’s security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

**Silicon Valley Clean Energy Authority**

By: ________________________________

Executive Officer

By: ________________________________

Chairman of the Board
EXHIBIT E

TERM NOTE

$___________________    Date:________

FOR VALUE RECEIVED, SILICON VALLEY CLEAN ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("Borrower"), promises to pay to the order of RIVER CITY BANK ("Lender") the principal sum of ________/100 DOLLARS ($_______), pursuant to the terms of that certain Credit Agreement (the "Credit Agreement") dated as of ________, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Term Note (this "Note") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Under Section 5 of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that unpaid Advances under the Revolving Credit be converted to a Term Loan. This Note evidences a Term Loan made to Borrower as of ________[date] in the original principal amount of $_______, and will bear interest from the date hereof. Borrower agrees to repay this Note by making sixty (60) equal monthly payments of principal hereunder in the amount of $______ each, plus all accrued but unpaid interest on the unpaid principal balance of this Note as of each Payment Date, beginning on the first Payment Date after the date of this Note, with all subsequent payments due and payable on each Payment Date thereafter as provided in the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on ________[date – not to exceed 60 months].

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender’s option to accelerate this Note and declare all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.
This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys’ fees and expert witnesses’ fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement any rights of Lender under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender’s security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

**Silicon Valley Clean Energy Authority**

By: ____________________________________________

[Executive Officer]

By: ____________________________________________

[Chairman of the Board]
EXHIBIT F

REQUEST FOR ADVANCE

$2,000,000 NON-REVOLVING CREDIT

BORROWER:  SILICON VALLEY CLEAN ENERGY AUTHORITY, HEREBY REQUESTS AN ADVANCE UNDER THE $2,000,000 NON-REVOLVING CREDIT NOTE IN ACCORDANCE WITH THE CREDIT AGREEMENT.

ADVANCE DATE: __________________________

AMOUNT OF REQUESTED ADVANCE: $__________________________________

BORROWER CERTIFICATION:

Borrower hereby certifies that:

(i) after making the Advance requested on the Advance Date above, the sum of all Advances shall not exceed the Non-Revolving Commitments then in effect;

(ii) as of the Advance Date, the representations and warranties contained in the Credit Agreement are true and correct in all material respects on and as of such Advance Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(iii) as of the Advance Date, no event has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby that would constitute an Event of Default or a Default.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By:  ____________________________________________

Chief Executive Officer

By:  ____________________________________________

Chairman of the Board

{2158044.DOCX;}
EXHIBIT G

REQUEST FOR ADVANCE

$18,000,000 REVOLVING CREDIT

BORROWER: SILICON VALLEY CLEAN ENERGY AUTHORITY, HEREBY REQUESTS AN ADVANCE UNDER THE $18,000,000 REVOLVING CREDIT NOTE IN ACCORDANCE WITH THE CREDIT AGREEMENT.

ADVANCE DATE: ____________________________

AMOUNT OF REQUESTED ADVANCE: $__________________________

PURPOSE OF ADVANCE:

___ - THIS ADVANCE WILL BE USED TO FUND RESERVES IN ACCORDANCE WITH THE POWER PURCHASE AGREEMENT AND FUNDS ARE TO BE DEPOSITED INTO THE LOCKBOX ACCOUNT: _____________.

___ - THIS IS A WORKING CAPITAL ADVANCE TO COVER THE POWER PURCHASE PAYMENT FOR THE MONTH ENDING ____________, 2016.

___ - ATTACHED IS THE INVOICE FOR SUCH POWER PURCHASE PAYMENT

___ - YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO THE POWER SUPPLIER AS FOLLOWS:

COMPANY NAME: ____________________________ -
WIRE INSTRUCTIONS:
BANK NAME: ____________________________
ADDRESS: ____________________________

ROUTING NUMBER: ____________________________
ACCOUNT NUMBER: ____________________________
OTHER REFERENCE: ____________________________

BORROWER CERTIFICATION:

BORROWER HEREBY CERTIFIES THAT:

(I) AFTER MAKING THE ADVANCE REQUESTED ON THE ADVANCE DATE ABOVE, THE SUM OF ALL ADVANCES SHALL NOT EXCEED THE REVOLVING COMMITMENTS THEN IN EFFECT:
(II) AS OF THE ADVANCE DATE, THE REPRESENTATIONS AND WARRANTIES CONTAINED IN
THE CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND
AS OF SUCH ADVANCE DATE TO THE SAME EXTENT AS THOUGH MADE ON AND AS OF
SUCH DATE, EXCEPT TO THE EXTENT SUCH REPRESENTATIONS AND WARRANTIES
SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS
AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF
SUCH EARLIER DATE; PROVIDED THAT, IN EACH CASE, SUCH MATERIALITY QUALIFIER
SHALL NOT BE APPLICABLE TO ANY REPRESENTATIONS AND WARRANTIES THAT
ALREADY ARE QUALIFIED OR MODIFIED BY MATERIALITY IN THE TEXT THEREOF; AND

(III) AS OF THE ADVANCE DATE, NO EVENT HAS OCCURRED AND IS CONTINUING OR WOULD
RESULT FROM THE CONSUMMATION OF THE BORROWING CONTEMPLATED HEREBY THAT
WOULD CONSTITUTE AN EVENT OF DEFAULT OR A DEFAULT.

(IV) THIS ADVANCE IS BEING USED FOR THE PURPOSE INTENDED AS PROVIDED IN THE CREDIT
AGREEMENT AND NO PORTION OF THIS ADVANCE IS BEING USED TO FUND OPERATING
LOSSES.

SILICON VALLEY CLEAN ENERGY AUTHORITY

BY: ________________________________
[ ]
CHIEF EXECUTIVE OFFICER

BY: ________________________________
Chairman of the Board
Exhibit H

Form of Subordination Agreement

SUBORDINATION AGREEMENT

River City Bank (the “Lender”) and the other parties signatories hereto (each, a “Subordinated Creditor” and collectively, the “Subordinated Creditors”), agree, effective November 15, 2016, as follows:

Section 1. Background and Purpose.

1.1 The Lender is making loans to Silicon Valley Clean Energy Authority, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “Obligor”), pursuant to that certain Credit Agreement dated as of the date hereof (as modified, amended, restated or replaced from time to time, the “Senior Loan Agreement”). The loans are evidenced by a Non-Revolving Promissory Note in the original principal balance of $2,000,000 (“Non-Revolving Note”) and a Revolving Credit Promissory Note in the original principal balance of $18,000,000 (together with the Non-Revolving Note, the “Senior Notes”). The Obligor is currently indebted to the Subordinated Creditors as set forth on Exhibit A attached hereto and incorporated herein (as the same may be amended, modified or refinanced, “Subordinated Debt”). The Lender and the Subordinated Creditors desire to enter into this Agreement to effectuate the subordination of the Subordinated Debt to the Senior Debt (as defined below). Capitalized terms used, but not otherwise defined, in this Subordination Agreement shall have the meanings ascribed to them in the Senior Loan Agreement.

Section 2. Subordination.

2.1 Each Subordinated Creditor hereby irrevocably subordinates, in accordance with the terms hereof, the payment and performance of the Subordinated Debt by the Obligor to it, to the prior payment and performance in full of all of the obligations specified in the Senior Loan Agreement and the Senior Notes (collectively, the “Senior Debt”). Each Subordinated Creditor acknowledges that it has been represented by counsel in connection with the transactions that are the subject of this Subordination Agreement. This Subordination Agreement shall be effective as to a Subordinated Creditor when such Subordinated Creditor signs this Subordination Agreement and execution by all Subordinated Creditors is not a condition to such effectiveness.

2.2 Under no circumstances will the Senior Debt be deemed to have been paid in full unless and until such time as, and when used in this Subordination Agreement with respect to the Senior Debt, the words “paid in full,” “payment in full,” and similar phrases shall mean that, the Lender has received payment, in immediately available funds, of 100% of all

{2158044.DOCX;}
outstanding Senior Debt, and all of the Lender’s obligations to extend credit under the Senior Loan Agreement have terminated.

2.3 The Subordinated Debt is subordinated in right of payment to the Senior Debt in accordance with this Agreement. Each Subordinated Creditor agrees to make appropriate entries in its books and records and stamp all Subordinated Debt documents evidencing the Subordinated Debt with the following legend:

“The indebtedness evidenced by this instrument is subordinated to the prior payment in full of the Senior Debt (as defined in the Subordination Agreement hereinafter referred to) pursuant to, and to the extent provided in, the Subordination Agreement effective as of November 15, 2016 by the maker hereof and payee named herein in favor of River City Bank.”

Section 3. Payments.

3.1 Until the payment in full of the Senior Debt, without the prior written consent of the Lender (which consent the Lender may refuse to give for any or no reason), under no circumstances will any Subordinated Creditor, directly or indirectly, take any action to enforce payment of or to collect the whole or any part of the Subordinated Debt or enforce any of the rights and remedies available to the Subordinated Creditor, other than in the manner and to the extent permitted by Section 4 hereof, or ask, demand, take or receive any collateral, mortgages or other security from the Obligor in respect of the Subordinated Debt. Any amounts paid by the Obligor to a Subordinated Creditor in violation of the terms of this Subordination Agreement shall be held by such Subordinated Creditor in trust and promptly paid over to the Lender for application to the Senior Debt in accordance with the Senior Loan Agreement.

3.2 Notwithstanding anything to the contrary contained in this Subordination Agreement, each Subordinated Creditor agrees that it will not, without the Lender’s prior written consent (which the Lender may refuse to give for any or no reason), directly or indirectly permit the modification or amendment of any of the terms or provisions, as they exist on the date hereof, of the note reflecting the Subordinated Debt (“Subordinated Note”), to the extent that any such modification or amendment would (a) result in any increase in the amount of the Subordinated Debt, (b) increase the amount, or accelerate the due date, of any payment or distribution in respect of the Subordinated Debt.

Section 4. Allowable Payments.

4.1 Subject to other applicable provisions of this Subordination Agreement, including, without limitation, those contained in Section 5 hereof, without the Lender’s prior written consent, the Obligor may not make, and a Subordinated Creditor may not accept from the Obligor, any payment in respect of the Subordinated Debt.

4.2 Notwithstanding anything to the contrary in this Subordination Agreement, the Obligor may set-off against amounts payable in respect of Subordinated Debt under the circumstances set forth or referenced in any documentation of such Subordinated Debt.
Section 5. Readjustment. Each Subordinated Creditor further agrees that, upon any distribution of the assets or readjustment of the indebtedness of the Obligor, whether by reason of liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors, or any other action or proceeding involving the readjustment of all or any of the Subordinated Debt, or the application of the property of the Obligor to the payment or liquidation thereof, the Lender, in any such instance, shall be entitled to receive payment in full of the Senior Debt prior to the payment of all or any part of the Subordinated Debt.

Section 6. Bankruptcy Issues. To the extent that the Obligor makes a payment to the Lender, which payment(s) (or any part thereof) subsequently are voided, invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, receiver, or any other person or entity pursuant to Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 et seq.) (the “Bankruptcy Code”), any other bankruptcy act, state or federal law, common law or equitable cause (“Insolvency Law”), then, to the extent any such payment(s) or proceeds are repaid by the Lender, the Senior Debt (or the part that was intended to be satisfied) will be revived for all purposes of this Subordination Agreement and will continue in full force and effect, as if such payment or proceeds had not been received by the Lender.

Section 7. Waivers. Each Subordinated Creditor hereby waives until the Senior Debt is paid in full any and all rights at law or in equity to subrogation, reimbursement or set off or any other rights which such Subordinated Creditor may have or hereafter acquire against the Obligor in connection with or as a result of such Subordinated Creditor’s execution, delivery and/or performance of this Subordination Agreement.

Section 8. Attorney-In-Fact. Each Subordinated Creditor irrevocably appoints the Lender as its attorney-in-fact, with full power of substitution, in either the Lender’s name or such Subordinated Creditor’s name, to do the following (but the Lender shall have no obligation to do so): (a) endorse and collect all checks, drafts, other payment orders and instruments representing or included in, any payment, dividend or distribution relating to, the Subordinated Debt or any Collateral securing the Subordinated Debt; (b) take any action to enforce, collect or compromise any of the Subordinated Debt; (c) exercise any other right, remedy, privilege or option of such Subordinated Creditor pertaining to any Subordinated Debt or Subordinated Debt documents; (d) take any actions or institute any proceedings that the Lender determines to be necessary or appropriate to collect or preserve the Subordinated Debt or any Collateral for the Subordinated Debt; (e) execute in the name of or otherwise authenticate on behalf of such Subordinated Creditor any record reasonably believed necessary or appropriate by the Lender for compliance with laws, rules or regulations applicable to any Subordinated Debt or any Collateral for the Subordinated Debt, or in connection with exercising the Lender’s rights under this Agreement; and (f) execute and file claims, proofs of claim or other documents, and to take any other action regarding all or any part of the Subordinated Debt necessary or appropriate to insure payment to and receipt by the Lender of all payments, dividends and other distributions on account of the Subordinated Debt, instruments evidencing the Subordinated Debt, or any Collateral for the Subordinated Debt. This appointment is irrevocable and coupled with an interest and shall survive the dissolution or disability of such Subordinated Creditor. Notwithstanding the foregoing, the Lender shall not be liable to any Subordinated Creditor for any failure (i) to prove the existence, amount, or circumstances of the Subordinated Debt; (ii) to exercise any right
related to the Subordinated Debt; or (iii) to collect any sums payable on or distributions attributable to, the Subordinated Debt.

Section 9. Representations and Warranties. Each Subordinated Creditor represents and warrants to the Lender as follows: (a) the execution, delivery and performance of this Agreement and each of the Subordinated Debt documents now outstanding (true and complete copies of which have been furnished to the Lender) have been duly authorized by all necessary action, are within the power and authority of the Subordinated Creditor and do not and will not (i) contravene the articles, charter, bylaws, partnership agreement, operating agreement, regulations or other organic documents, if any, establishing or governing such Subordinated Creditor, any applicable law or governmental regulation or any contractual restriction binding on or affecting such Subordinated Creditor or any of their respective properties, (ii) result in or require the creation of any lien upon or with respect to any of such Subordinated Creditor’s properties or (iii) violate the rights of any person or entity; (b) this Agreement and each of the Subordinated Debt documents are legal, valid and binding obligations of such Subordinated Creditor, enforceable against such Subordinated Creditor in accordance with their respective terms except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors’ rights and by general equitable principles; (c) there exists no default, event of default, or event which with the passage of time, the giving of notice or both may result in a default or event of default under the Subordinated Debt or any Subordinated Debt documents or any event or occurrence that gives a Subordinated Creditor the right to terminate a commitment, refuse to make an advance, accelerate a maturity with or without notice or the passage of time; and (d) if such Subordinated Creditor is an entity, that entity is and will remain duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation and in good standing in the jurisdictions in which it is doing business. Each Subordinated Creditor further represents and warrants to the Lender as follows: (A) such Subordinated Creditor owns and holds the Subordinated Debt now outstanding free and clear of any lien that has not been disclosed in writing by such Subordinated Creditor to the Lender; (B) such Subordinated Creditor is now solvent, the execution, delivery and performance of this Agreement will benefit such Subordinated Creditor directly or indirectly and such Subordinated Creditor has and will receive fair and reasonably equivalent value for the obligations undertaken in this Agreement; (C) such Subordinated Creditor has (1) without reliance on the Lender or any information received from the Lender and based upon the documents and information such Subordinated Creditor deems appropriate, made an independent investigation of the transactions contemplated by this Agreement and the Borrower, the Borrower’s business, assets, operations, prospects and condition, financial or otherwise, and any circumstances that may bear upon those transactions, the Borrower or the obligations and risks undertaken in this Agreement with respect to the Senior Debt; (2) adequate means to obtain from the Borrower on a continuing basis information concerning the Senior Debt and the Lender has no duty to provide to such Subordinated Creditor any information; (3) full and complete access by and through the Borrower to the Lender’s loan documents; (4) not relied and will not rely upon any representations or warranties of the Lender not embodied in this Agreement or any acts taken by the Lender (including but not limited to any review by the Lender of the affairs of the Borrower) prior to or after the date of this Agreement; (D) such Subordinated Creditor is the sole holder of the Subordinated Debt with full power to make the subordinations set forth in this Agreement; and (E) such Subordinated Creditor has not made or permitted any assignment or transfer, as security or otherwise, of the Subordinated Debt, any Subordinated Debt documents or
of any of the Collateral securing the Subordinated Debt, and such Subordinated Creditor shall not do so except in favor of the Lender as long as this Agreement remains in effect.

Section 10. Successors and Assigns. This Subordination Agreement immediately shall be binding on each Subordinated Creditor and on its heirs, representatives and assigns, and shall inure to the benefit of the Lender and its successors and assigns. Whenever reference is made in this Subordination Agreement to the Obligor, such term shall include any successor or assign of the Obligor, including, without limitation, a receiver, trustee, or debtor or debtor-in-possession under the Bankruptcy Code.

Section 11. Notices. Any notice required or permitted hereunder shall be given in writing by personal delivery, by overnight delivery through a recognized courier service, by certified U.S. mail, or by telecopier (fax) (i) as to a Subordinated Creditor, by giving such notice to such Subordinated Creditor at the address set forth below such Subordinated Creditor’s signature hereon, and (ii) as to the Lender, by giving such notice to the Lender at the address set forth below its signature hereon. All such notices shall be deemed to have been received on the date given, except that any such notice given by overnight delivery will be deemed to have been received on the next business day after such notice was delivered to such a carrier for delivery, and any such notice given by certified U.S. mail will be deemed to have been received three days after such notice was deposited in the U.S. mails, postage prepaid.

Section 12. Governing Law. THIS SUBORDINATION AGREEMENT SHALL BE GOVERNED BY CALIFORNIA LAW (WITHOUT REGARD TO ANY JURISDICTION’S CONFLICT OF LAWS PRINCIPLES). EACH SUBORDINATED CREDITOR AND THE LENDER EACH WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS SUBORDINATION AGREEMENT. This is a “Subordination Agreement” within the meaning of Section 510(a) of the Bankruptcy Code and shall be interpreted and construed accordingly in any proceeding under the Bankruptcy Code.

Section 13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

[Remainder of this Page Intentionally Left Blank]
IN WITNESS WHEREOF, the undersigned has caused this Subordination Agreement to be executed as of the Effective Date.

City of Campbell

By: __________________________
Name: _________________________
Title: __________________________

Address for notice and service of process:

______________________________

City of Cupertino

By: __________________________
Name: _________________________
Title: __________________________

Address for notice and service of process:

______________________________

City of Gilroy

By: __________________________
Name: _________________________
Title: __________________________

Address for notice and service of process:

______________________________

(Signature Blocks Continue on Following Pages)
City of Los Altos

By: ____________________________
Name: __________________________
Title: __________________________
Address for notice and service of process:

________________________________

________________________________

Town of Los Altos Hills

By: ____________________________
Name: __________________________
Title: __________________________
Address for notice and service of process:

________________________________

________________________________

Town of Los Gatos

By: ____________________________
Name: __________________________
Title: __________________________
Address for notice and service of process:

________________________________

________________________________

(Signature Blocks Continue on Following Pages)
City of Monte Sereno

By: _____________________________
Name: ___________________________
Title: ____________________________

Address for notice and service of process:

_________________________________

_________________________________

City of Morgan Hill

By: _____________________________
Name: ___________________________
Title: ____________________________

Address for notice and service of process:

_________________________________

_________________________________

City of Mountain View

By: _____________________________
Name: ___________________________
Title: ____________________________

Address for notice and service of process:

_________________________________

_________________________________

(Signature Blocks Continue on Following Pages)
County of Santa Clara (Unincorporated Area)

By: ____________________________
Name: __________________________
Title: __________________________

Address for notice and service of process:

________________________________
________________________________

City of Saratoga

By: ____________________________
Name: __________________________
Title: __________________________

Address for notice and service of process:

________________________________
________________________________

City of Sunnyvale

By: ____________________________
Name: __________________________
Title: __________________________

Address for notice and service of process:

________________________________
________________________________

(Signature Blocks Continue on Following Page)
RIVER CITY BANK, as Lender

By: __________________________
Name: _________________________
Title: __________________________

Address for notice and service of process:

River City Bank
2485 Natomas Park Drive, Suite 100
Sacramento, CA 95833
Attention: ______________________
Fax: (916) ______________________
### Exhibit A

<table>
<thead>
<tr>
<th>Lender</th>
<th>Total Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Campbell</td>
<td>$100,000</td>
</tr>
<tr>
<td>City of Cupertino</td>
<td>$520,000</td>
</tr>
<tr>
<td>City of Gilroy</td>
<td>$100,000</td>
</tr>
<tr>
<td>City of Los Altos</td>
<td>$100,000</td>
</tr>
<tr>
<td>Town of Los Altos Hills</td>
<td>$25,000</td>
</tr>
<tr>
<td>Town of Los Gatos</td>
<td>$100,000</td>
</tr>
<tr>
<td>City of Monte Sereno</td>
<td>$25,000</td>
</tr>
<tr>
<td>City of Morgan Hill</td>
<td>$100,000</td>
</tr>
<tr>
<td>City of Mountain View</td>
<td>$520,000</td>
</tr>
<tr>
<td>County of Santa Clara (Unincorporated Area)</td>
<td>$520,000</td>
</tr>
<tr>
<td>City of Saratoga</td>
<td>$100,000</td>
</tr>
<tr>
<td>City of Sunnyvale</td>
<td>$520,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,730,000</strong></td>
</tr>
</tbody>
</table>
ACKNOWLEDGMENT

Silicon Valley Clean Energy Authority, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “Company”), acknowledges receipt of a copy of the Subordination Agreement by and between River City Bank (the “Lender”), and the cities, towns and counties parties thereto (each a “Subordinated Creditor”), dated as of November _____, 2016 (as amended from time to time, the “Subordination Agreement”), and agrees that: (a) it will not: (i) except to the extent permitted by the Subordination Agreement, pay any of the Subordinated Debt until the payment in full of the Senior Debt, (ii) provide any security or collateral for any of Subordinated Debt until the payment in full of the Senior Debt, or (iii) take or omit from taking any action that would cause a breach of the Subordination Agreement; (b) neither the Company nor any of its successors or assignees, by operation of law or otherwise, is a party to the Subordination Agreement, and neither the Company nor any of its successors or assignees will have: (i) any right in, or to enforcement of, the Subordination Agreement as against the Lender or a Subordinated Creditor, (ii) any claim of damage if the Lender or a Subordinated Creditor defaults under the Subordination Agreement, or (iii) any right to object to any amendment, modification, or supplement to, or any restatement or replacement of, the Subordination Agreement that is agreed upon by a Subordinated Creditor and the Lender; and (c) none of the provisions of the Subordination Agreement limit or impair the Lender’s rights against the Company or its successors and assigns or any of their respective obligations, indebtedness, or liabilities to the Lender under the Senior Loan Agreement, any related documents, or otherwise.

All capitalized terms used in this Acknowledgment that are defined in the Subordination Agreement and not otherwise defined in this Acknowledgment have the meanings specified in the Subordination Agreement.

IN WITNESS WHEREOF, the Company has executed and delivered this Acknowledgement to the Lender as of the Effective Date.

Silicon Valley Clean Energy Authority

By: ________________________________
Name: ______________________________
Title: ______________________________

{2158044.DOCX;}
EXHIBIT I

DOCUMENT SUMMARY AND NOTICE OF FINAL AGREEMENT

Borrower and each Guarantor have been provided with the following documents issued in connection with the loans evidenced by a Non-Revolving Promissory Note in the original principal balance of $2,000,000 (“Non-Revolving Note”) and a Revolving Credit Promissory Note in the original principal balance of $18,000,000 (together with the Non-Revolving Note, the “Notes”):

Credit Agreement with Exhibits
A – Definitions
B – Form of Guarantee
C – Form of Non-Revolving Note
D – Form of Revolving Note
E – Form of Term Note
F – Form of Request for Advance (NRLOC)
G – Form of Request for Advance (RLOC)
H – Form of Subordination Agreement
I – Form of Document Summary and Notice of Final Agreement

And Schedules
1 – Indebtedness for Borrowed Money

Assignment of Deposit Account Agreement

BORROWER AND EACH GUARANTOR REPRESENT AND WARRANT:

1) THEY HAVE READ, UNDERSTAND AND AGREE WITH THE TERMS OF EACH DOCUMENT LISTED ABOVE AND THIS AGREEMENT;

2) THEY CONFIRM THAT THERE ARE NO CONFLICTS BETWEEN THE TERMS OF THE DOCUMENTS AND THEIR RESPECTIVE UNDERSTANDING OF THE TRANSACTION;

3) NOTWITHSTANDING THE EFFECTIVENESS OF THE DOCUMENTS, THE OBLIGATIONS OF EACH GUARANTOR UNDER ITS APPLICABLE GUARANTY SHALL NOT BE IMPAIRED OR AFFECTED AND THE APPLICABLE GUARANTIES ARE, AND SHALL CONTINUE TO BE, IN FULL FORCE AND EFFECT AND ARE HEREBY CONFIRMED AND RATIFIED IN ALL RESPECTS.

4) NOTHING IN THE LOAN, THE DOCUMENTS OR ANY OTHER DOCUMENT SHALL BE DEEMED TO REQUIRE THE CONSENT OF GUARANTORS TO ANY FUTURE AMENDMENT TO THE LOAN.

5) THE WRITTEN DOCUMENTS ISSUED IN CONNECTION WITH THE LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6) THE WRITTEN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.
7) EACH HAS HAD AN OPPORTUNITY TO DISCUSS THE LOAN TRANSACTION WITH THEIR COUNSEL.

BORROWER:

Silicon Valley Clean Energy Authority

By: __________________________

[ ]

Chief Executive Officer

By: __________________________

Chairman of the Board

GUARANTOR:

City of Mountain View

By: __________________________

Name: _________________________

Title: __________________________

City of Sunnyvale

By: __________________________

Name: _________________________

Title: __________________________

Santa Clara County

By: __________________________

Name: _________________________

Title: __________________________

City of Gilroy

By: __________________________

Name: _________________________

Title: __________________________
To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 5: Approve Memorandum of Understanding with the Cities of Gilroy, Mountain View, and Sunnyvale and the County of Santa Clara for Provision of Loan Guarantee (Action)

Date: 11/9/2016

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Memorandum of Understanding (MOU), in substantially the same form as attached, between SVCEA and the Cities of Gilroy, Mountain View, Sunnyvale, and the County of Santa Clara regarding the provision of a loan guarantee totaling $2,000,000.

BACKGROUND & ANALYSIS

As described in the staff report regarding the Credit Agreement with River City Bank, SVCEA seeks a Non-revolving Line of Credit (NRLOC) in the amount of $2,000,000, which requires 100% guarantee be provided. The Cities of Gilroy, Mountain View, and Sunnyvale and the County of Santa Clara are providing the guarantee, in amounts proportional to their voting shares, as follows:

<table>
<thead>
<tr>
<th>Agency</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Gilroy</td>
<td>$220,000</td>
</tr>
<tr>
<td>City of Mountain View</td>
<td>$480,000</td>
</tr>
<tr>
<td>City of Sunnyvale</td>
<td>$1,020,000</td>
</tr>
<tr>
<td>County of Santa Clara</td>
<td>$280,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

The MOU acknowledges the provision of the guarantee and articulates the authority of each of the guarantor agencies to provide the guarantee based on their roles as a party to the SVCEA Joint Powers Agreement (JPA). The MOU includes provisions to ensure that the guarantor agencies are released of the obligation in a fair and expedited manner. Release and, if needed, repayment of the guarantees will be completed prior to SVCEA reimbursing its member agencies of the initial cost contributions provided by each of the twelve member agencies. Given that the NRLOC has a maximum term of 15 months, the guarantees are expected to be released well in advance of the March 31, 2020 due date specified in the JPA for reimbursement of the initial cost contributions. The MOU also requires that SVCEA ensure that the guarantee is drawn and, if needed, repaid in proportion to the relative amount of each of the four guarantees.

After approval of the Board, each of the four guarantor agencies will seek approval of the MOU, which for some agencies will require the approval of their governing body. The MOU is expected to be executed by XX

ATTACHMENTS

1. Memorandum of Understanding by and among the Silicon Valley Clean Energy Authority and the City of Gilroy, the City of Mountain View, the City of Sunnyvale, and the County of Santa Clara Regarding Bank Loan Guarantee
Memorandum of Understanding By and Among the Silicon Valley Clean Energy Authority and the City of Gilroy, the City of Mountain View, the City of Sunnyvale, and the County of Santa Clara Regarding Bank Loan Guarantee

Whereas, the Silicon Valley Clean Energy Authority (SVCEA) is a joint powers agency formed by the Silicon Valley Clean Energy Authority Joint Powers Agreement (SVCEA JPA) and operating under the authority of the Joint Exercise of Powers Act (Government Code Sections 6500 et seq.) to form and operate a separate public agency to implement a Community Choice Aggregation (CCA) program along with other purposes enumerated in the SVCEA JPA; and

Whereas, the Cities of Gilroy, Mountain View, and Sunnyvale and the County of Santa Clara are Parties to the SVCEA JPA (the “Parties”), and pursuant to Section 2.3 of the SVCEA JPA, the obligations of SVCEA are not the debts, liabilities or obligations of the Parties to the SVCEA JPA; and

Whereas, for the purposes of this Memorandum of Understanding (MOU), Gilroy, Mountain View, and Sunnyvale are each acting in their individual capacities as a municipal corporation and the County of Santa Clara is acting in its individual capacity as a subdivision of the state; and

Whereas, SVCEA has requested that the Parties provide guarantees for a $2,000,000 working capital facility from River City Bank in the following amounts: $220,000 for Gilroy, $480,000 for Mountain View, $1,020,000 for Sunnyvale and $280,000 for the County of Santa Clara; and

Whereas, the Joint Exercise of Powers Act at Government Code Section 6508.1 permits a party to the SVCEA JPA to separately contract for, or assume responsibility for, specific debts, liabilities or obligations of SVCEA; and

Whereas, the governing body of each of the Parties have approved the loan guarantees as described in this MOU.

Now, therefore SVCEA, Gilroy, Mountain View, Sunnyvale and the County of Santa Clara agree as follows:

1. SVCEA represents that it has the legal authority under the laws of the State of California to enter into the working capital loan transaction in the amount of $2,000,000 from River City Bank, as evidenced by the Loan Agreement attached hereto as Exhibit A (hereinafter referred to as the River City Loan).

2. In reliance upon the above representation and agreement, Gilroy will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the loan guarantee, Gilroy represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that Gilroy’s liability under this MOU is for the specific bank loan guarantee identified herein for Gilroy only and that Gilroy shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.

3. In reliance upon the above representation and agreement, Mountain View will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the
loan guarantee, Mountain View represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that Mountain View’s liability under this MOU is for the specific bank loan guarantee identified herein for Mountain View only and that Mountain View shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.

4. In reliance upon the above representation and agreement, Sunnyvale will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the loan guarantee, Sunnyvale represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that Sunnyvale’s liability under this MOU is for the specific bank loan guarantee identified herein for Sunnyvale only and that Sunnyvale shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.

5. In reliance upon the above representation and agreement, the County of Santa Clara will sign the Commercial Guarantee in the form attached hereto as Exhibit B. In furtherance of the loan guarantee, the County of Santa Clara represents that it has the financial wherewithal to provide the guaranteed funds if called until the loan has been satisfied by SVCEA or the full amount of the guarantee has been drawn, whichever occurs first. SVCEA agrees that the County of Santa Clara’s liability under this MOU is for the specific bank loan guarantee identified herein for the County of Santa Clara only and that the County of Santa Clara shall not be liable for any other debts, liabilities or obligations of SVCEA as provided by the SVCEA JPA.

6. SVCEA will ensure that a provision is included within the River City Loan providing that River City Bank will enforce the guarantees provided pursuant to the MOU in proportion to the amount of each of the four guarantees.

7. SVCEA will repay the Parties for any draw on the loan guarantees described in this MOU prior to commencing reimbursement of any of the Initial Costs described in Section 6.3.2 of the SVCEA JPA. Any partial reimbursement by SVCEA to the Parties will be disbursed proportionally to the amount of each of the four guarantees.

APPROVED BY SVCEA

By: Tom Habashi, Chief Executive Officer
Dated: 

APPROVED BY CITY OF GILROY

By: 
Dated: 
APPROVED BY CITY OF MOUNTAIN VIEW
By: _______________________________  Dated: ________________
_______________________________

APPROVED BY CITY OF SUNNYVALE
By: _______________________________  Dated: ________________
_______________________________

APPROVED BY THE COUNTY OF SANTA CLARA
By: _______________________________  Dated: ________________
_______________________________
Staff Report – Item 6

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 6: Approve Resolution Delegating Authority to the Chief Executive Officer to Execute Master Agreements for Power Supply with 3 Phases Renewables Inc., Energy America, LLC, Exelon Generation Company, LLC, Morgan Stanley Capital Group, Inc., Powerex Corp., and Shell Energy North America (US), L.P.

Date: 11/9/2016

RECOMMENDATION

Approve resolution delegating authority to the Chief Executive Officer to execute Master Agreements (as defined below) with each of the six short listed power suppliers with terms consistent with those contained in the attached agreements.

BACKGROUND

On August 15, 2016, SVCE issued a request for proposals for power supply and scheduling coordination services. On September 19, 2016 we received twelve proposals, and contract negotiations commenced with six power suppliers. The power supply proposals contained indicative pricing with the understanding that pricing will be refreshed after other terms and conditions are finalized and prior to agreement on any specific power purchase transactions. This is expected to occur in January 2017, in preparation for the commencement of power sales to SVCEA customers in April 2017.

SVCEA is basing its power supply agreements on the industry-standard Edison Electric Institute master power purchase and sale agreement ("Master Agreement"). The Master Agreement is a widely used standard form agreement containing general terms and conditions for electric power transactions. The first section of the Master Agreement, known as the "Cover Sheet", enables election of certain optional provisions and allows for modifications to the standard terms agreed to between the parties. Generally speaking, the Cover Sheet represents the product of negotiations that have occurred among the parties as those relate to the Master Agreement.

ANALYSIS & DISCUSSION

The CEO, working in close coordination with outside legal counsel and SVCE consultants, has negotiated Master Agreements with six power suppliers, which will enable SVCE to purchase energy from a diverse set of suppliers from the outset of SVCE operations. These power suppliers are listed as follows:

- Exelon Generation Company, LLC (a.k.a. Constellation)
- Energy America, LLC (a.k.a. Direct Energy)
- Morgan Stanley Capital Group, Inc.
- Powerex Corp.
- Shell Energy North America (US), L.P.
It is important to understand that execution of the Master Agreements does not itself obligate SVCE to purchase energy. Energy transactions will be made through written "Confirmations" setting forth the specifics of the purchase such as product, volume, and price. SVCEA is currently negotiating Confirmations with each power supplier and anticipates finalizing the form of the Confirmations and any associated credit agreements in December, with execution of the Confirmations and credit agreements expected to take place in January 2017.

While the requested authority only relates to execution of the Master Agreements, it is helpful to have a contextual understanding of the full set of agreements that will be required to supply SVCE's energy needs. The power supply agreements include the following documents:

- The Edison Electric Institute Master Power Purchase & Sale Agreement: This is the master contract between SVCE and each power provider, and includes standard, boilerplate terms and conditions, with modifications negotiated by the parties as well as certain global credit provisions.
- The Confirmations: These agreements set forth the commercial terms and conditions of each separate purchase transaction. In the present case, the Confirmations will provide the price, quantity, and delivery specifications for the energy, renewable energy, carbon free energy and capacity being purchased by SVCEA.
- The Intercreditor and Collateral Agency Agreement, the Security Agreement and the Deposit Account Control Agreement ("Lockbox Agreements"). These three agreements all relate to the creation of a "multi-party lockbox". Because SVCE is a new entity with few assets at this time, absent forms of credit assurance, power suppliers are generally unwilling to sell SVCE large volumes of energy. One form of assurance that SVCE can provide is agreeing to place ratepayer revenues into a "lockbox" with instructions that the power supplier has a priority interest in the ratepayer funds. The "multi-party lockbox" will facilitate contracting with multiple power suppliers by allowing SVCE to authorize distribution of lockbox proceeds to more than one power supplier. The lockbox is managed by a bank, acting as collateral agent for the benefit of the secured power suppliers.

Unlike the Master Agreements and Confirmations, which are negotiated and executed separately with each power supplier, there will be a single set of Lockbox Agreements for the benefit of all secured power suppliers. Three of the six power suppliers will be utilizing the lockbox credit structure, and each of these as well as the bank must agree to the same set of Lockbox Agreements.

Assuming Board Authorization, the CEO intends to execute Master Agreements in substantially the same form as attached to this memorandum, and SVCE will be well positioned to purchase energy from a diverse group of power suppliers. We will continue to negotiate the Confirmation and Lockbox agreements with the intent to seek approval of these agreements at the next Board meeting in December. Following execution of the Master Agreements and once all terms and conditions of the other agreements are finalized, we will request updated pricing from the power suppliers and select among the best offers for execution of Confirmations.

**ATTACHMENTS**

1. Resolution Delegating Authority to the Chief Executive Officer to Execute An EEI Master Agreement with Terms Consistent with Those Presented With Each of the Short-Listed Energy Service Providers
2. 3 Phases Renewables Inc., EEI Master Agreement
3. Energy America, LLC, EEI Master Agreement
4. Exelon Generation Company, LLC, EEI Master Agreement
5. Morgan Stanley Capital Group, Inc., EEI Master Agreement
6. Powerex Corp., EEI Master Agreement
7. Shell Energy North America (US), L.P., EEI Master Agreement
RESOLUTION NO. 2016-09

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN EEI MASTER AGREEMENT WITH TERMS CONSISTENT WITH THOSE PRESENTED WITH EACH OF THE SHORT-LISTED ENERGY SERVICE PROVIDERS.

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

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

WHEREAS, launch of service of the community choice aggregation program is planned for April 3, 2017; and

WHEREAS, Silicon Valley Clean Energy administered a competitive process to select contractors capable of providing energy, renewable energy, carbon free energy, and related products and services (the “Product”) from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices; and

WHEREAS, Silicon Valley Clean Energy has identified six energy service providers (each, an “Energy Service Provider” or “ESP”) as having competitive proposals and the ability to meet the aforementioned goals;

WHEREAS, Silicon Valley Clean Energy has negotiated a separate EEI Master Agreement (the “Master Agreement”) with each ESP;

WHEREAS, the Master Agreement is an industry standard framework agreement between an energy purchaser and an energy supplier that establishes certain terms and conditions for the contractual relationship between an energy purchaser and energy supplier, but which does not require a purchaser to purchase or a supplier to supply the Product without further written agreements known as “confirmations,” which confirmations shall be presented to the Board for review and approval at the appropriate time;

WHEREAS, there are minor differences in each form of Master Agreement based upon changes requested by each ESP, these differences are not material in the overall context of the proposed transaction;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute each of the aforementioned Master Agreements for the reasons provided above;

1
NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

Execute a Master Agreement with terms consistent with the form of agreement presented to the Board of Directors with the following short-listed Energy Service Providers:

3 Phases Renewables, Inc.
Direct Energy Business, LLC
Exelon Generation Company, LLC
Morgan Stanley Capital Group Inc.
Powerex Corp.
Shell Energy North America

ADOPTED AND APPROVED this ___ day of November, 2016.

____________________________
Chair

ATTEST:

____________________________
Secretary
MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement (Version 2.1, modified 4/25/00) ("Master Agreement") is made as of the following date: ________________________ ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name: 3 Phases Renewables Inc. ("3 Phases" or "Party A")

All Notices:
Street: 1228 E. Grand Ave.
City: El Segundo CA 90245
Attn: Mike Mazur
Phone: (310) 798-5275
Facsimile: (310) 939-1284
E-mail: 
Duns: 
Federal Tax ID Number: 

Invoices:
Attn: Accounts Payables
Phone: (310) 939-1283 x301
Facsimile: (310) 939-1284
Email: accounting@3phasesrenewables.com

Scheduling:
Attn: Scheduling Desk
Phone: (310) 939-1283 x 304
Facsimile: (310) 939-1284
Email: scheduling@3phasesrenewables.com

Payments:
Attn: Accounts Receivables
Phone: (310) 939-1283 x301
Facsimile: (310) 939-1284
E-mail: accounting@3phasesrenewables.com

Wire Transfer:

Name: Silicon Valley Clean Energy Authority, a California joint powers authority ("Silicon Valley Clean Energy" or "Party B")

All Notices:
Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale, CA Zip: 94087
Attn: Tom Habashi
Phone: (408) 721-5301
Facsimile:
E-mail: tomh@svcleanenergy.org
Duns: 
Federal Tax ID Number: 

Invoices:
Attn: Silicon Valley Clean Energy Authority Finance
Phone: (408) 721-5301
Facsimile:

Scheduling:
Phone: (916) 221-4327
Address: 604 Sutter Street, Suite 250, Folsom, CA 95630
Email: eric@zglobal.biz

Payments:
Attn: Silicon Valley Clean Energy Authority Finance
Phone: (408) 721-5301
Facsimile:
E-mail

Wire Transfer:
Credit and Collections:
Attn: Risk Management
Phone: (310) 939-1283
Facsimile: (310) 939-1284

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: General Counsel
Phone: (310) 939-1283
Facsimile: (310) 939-1284

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

<table>
<thead>
<tr>
<th>Party A Tariff:</th>
<th>Tariff</th>
<th>Dated</th>
<th>Docket Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party B Tariff:</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

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

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

Article Five
Events of Default; Remedies
☒ Party A: 3 Phases
☐ Cross Default for Party A:
Cross Default Amount

☐ Cross Default for Party B:
☒ Party B: Silicon Valley Clean Energy Authority
Cross Default Amount
☐ Other Entity:
Cross Default Amount

5.6 Closeout Setoff
☐ Option A (Applicable if no other selection is made.)
☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
☐ Option C (No Setoff)

Article 8
8.1 Party A Credit Protection:
Credit and Collateral Requirements
(a) Financial Information:
☐ Option
☐ Option B Specify:
☒ Option C Specify: (A) (1) The annual report containing audited consolidated financial statements for such fiscal year of Silicon Valley Clean

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
Energy as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at www.svclaneenergy.com, and (2) quarterly unaudited financial statements for Silicon Valley Clean Energy as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The statements shall consist of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, statement of cash flows on a consolidating basis (as applicable), including the associated notes. Audited statements shall be audited by an independent certified public accountant. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B’s fiscal year ends June 30. (B) If and for so long as all undelivered (or partially undelivered) Transactions (in aggregate) hereunder are greater than 200,000 MWh or have a remaining term or tenor greater than six (6) months, Party B shall provide the following information to Party A at or before the times specified: (a) within 140 days after the end of each fiscal year: (1) by customer class (residential, commercial and industrial), the number and volume of customers that elected to opt out of Party B’s service, and (2) total retail customers by class (residential, commercial and industrial) by number and volume in the service territory; and (b) within 140 days after the end of each fiscal year, forecast retail sales and supply under contracts for the next five (5) fiscal years.

(b) Credit Assurances:

(c) Collateral Threshold:

If applicable, complete the following:

☑ Party B Collateral Threshold: Shall be $0; provided, however, that Party B’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $0

Party B Rounding Amount: $0

(d) Downgrade Event:

☐ Not Applicable
☒ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if the Credit Rating of [Party B or Party B’s Guarantor] falls below BBB- from S&P or below Baa3 from Moody’s, or if [Party B or Party B’s Guarantor] is not rated by either S&P or Moody’s.
Other:
Specify:

(e) Guarantor for Party B: NONE

Guarantee Amount: Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A
☐ Option B Specify:
☐ Option C Specify:

(b) Credit Assurances:

☐ Not Applicable
☒ Applicable

(c) Collateral Threshold:

☐ Not Applicable
☒ Applicable

If applicable, complete the following:

☒ Party A Collateral Threshold:

Party A Independent Amount: $0

Party A Rounding Amount:

(d) Downgrade Event:

☒ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if the Credit Rating of Party A’s Guarantor falls below BBB- from S&P or below Baa3 from Moody’s, or if Party A’s Guarantor is not rated by any Ratings Agency.

☐ Other:
Specify: __________

(e) Guarantor for Party A:

Guarantee Amount:

Article 10
Confidentiality

☒ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☒ Party B is a Governmental Entity or Public Power System
Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.6. If not checked, inapplicable

### Other Changes

**Cover Sheet: Schedule M**

The Cover Sheet is revised by deleting the reference “Section 8.6” and replacing it with “Section 8.4”.

**Article One: General Definitions**

Section 1.1 is revised by adding the following sentence to the end of the definition:

“Notwithstanding the foregoing, the public entities that are designated as “Parties” under the Joint Powers Agreement (referred to herein as “members” of Party B) shall not constitute or otherwise be deemed an “Affiliate” of Party B for the purposes of this Master Agreement or any Confirmation.”

Section 1.12 is revised to read as follows:

“1.12 “Credit Rating” means, with respect to any entity, the rating then assigned by Moody’s, S&P or any other rating agency agreed by the Parties as set forth in the Cover Sheet, to such entity’s senior unsecured long-term debt obligations (not supported by insurance provider 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 Moody’s or as an issuer or corporate credit rating by S&P or another rating by any other rating agency agreed by the Parties as set forth in the Cover Sheet. In the event that the Party or its Guarantor has multiple ratings, the lower rating shall prevail.”

The following defined term is added as Section 1.26A:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of March 31, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

Section 1.27 is revised by (A) deleting the word “transferable” in the first line and replacing it with “non-transferable”, (B) deleting the words “credit rating” in third line and replacing it with “long-term debt rating or deposit rating”, and (C) adding the phrase “and at least $10 billion in total assets” in the third line immediately after the word “Moody’s”.

The following defined term is added as Section 1.49A:

“1.49A “Ratings Agency” means S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.”

Section 1.50 is revised to read as follows:

“1.50 “Recording” has the meaning set forth in Section 2.5.”

Section 1.52 is deleted in its entirety as replaced with the following:

“1.52 “S&P” means S&P Global Market Intelligence, a division of S&P Global Inc., or its successor.”

**Article Two: Transaction Terms and Conditions**

Section 2.1 is revised by deleting the word “A” in the first line thereof and replacing it with
the following: “Subject to Section 2.3, a”.

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

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

Section 2.4 is amended by deleting the words “either orally or” in the seventh line thereof.

Section 2.5 is revised by deleting the last two sentences thereof in their entirety.

Article Four: Remedies for Failure to Deliver/Receive

Each of Section 4.1 and Section 4.2 are revised so that the words “five (5) Business Days” in the fifth line of each section are deleted and replaced with “two (2) Business Days”.

Article Five: Events of Default; Remedies

Section 5.1(a) is revised to delete “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 5.1(g) is revised (A) by adding “(after giving effect to any applicable notice requirement or grace period)” in the second line after the word “continuation”, (B) by adding “required to be made under one or more agreements for such Party or any other party specified in the Cover Sheet,” in the eleventh line before the word “individually”, and (C) by adding the following phrase at the end of the section “provided, an Event of Default shall not occur under this Section 5.1(g) if, as demonstrated to the reasonable satisfaction of the other Party, the Event of Default or the failure to pay is the result of a failure to pay caused by an error or omission of an administrative or operational nature, funds were available to such Party to enable it to make the relevant payment when due, and such relevant payment is made within three (3) Business Days following receipt of written notice from the party to whom the payment is owed.”.

Section 5.1(h)(ii) is revised to add the phrase “or any other agreement between Party A or its Affiliate and Party B or its Affiliates,” after the word “Agreement”.

Section 5.1(h)(v) is revised by adding the phrase “made in connection with this Agreement” after “any guaranty”.

The “.” at the end of subparagraph (v) of Section 5.1(h) is replaced with “;” and the following two paragraphs are added to the end of Section 5.1:

“(i) a Letter of Credit Failure that is not cured within five (5) Business Days after the occurrence thereof; or

(j) a default, event of default, termination event, breach or any other similar event (howsoever expressed) that has not been remedied within the applicable grace period under any other agreement or instrument (including without limitation commodity or financial derivative agreements or transactions) between a Party or its Affiliate and the other Party or its Affiliate, that results in the other party being entitled under the terms of such other agreement to terminate and liquidate transactions and arrive at a net settlement payment thereunder by invoking a process similar in substance to the process described in Sections
5.2, 5.3 and 5.6 regardless of the defined terms used to describe the same.

Section 5.2 is revised by reversing the placement of “(i)” and “to”.

Clause (b) of Section 5.3 is revised so that the phrase “plus, at the option of the Non-Defaulting Party, any cash then available to the Defaulting Party pursuant to Article Eight,” is inserted after the first occurrence of the words “Non-Defaulting Party”.

Section 5.3 is amended by adding the following sentence at the end of the section:

“Nowithstanding the immediately preceding sentence, no Termination Payment shall be due or payable to the Defaulting Party.”

The following is added as a new Section 5.8:

“5.8 Letter of Credit Failure. For the purposes of this Article Five, “Letter of Credit Failure” shall mean, with respect to a Party that has provided a Letter of Credit as Performance Assurance:

(a) a failure to renew or substitute a Letter of Credit by no later than fifteen Business Days prior to expiry thereof;

(b) the issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P or at least “A3” by Moody’s and fails to maintain at least $10 billion in total assets;

(c) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit if such failure continues after the lapse of any applicable grace period;

(d) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(e) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement or any outstanding Transaction; or

(f) any event analogous to an event specified in Subsection 5.1(d) or (f) of this Agreement occurs with respect to the issuer of such Letter of Credit.

However, no Letter of Credit Failure will occur with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.”

Article Six: Payment and Netting

Section 6.3 is amended by changing “twelve (12) months” to “twenty-four (24) months” in lines 3, 16 and 18.

Section 6.4 is revised by adding the following sentence to the end of the section:

“In the event the Parties are transacting under additional agreements, all transactions completed in the same month shall be netted against each other using the procedure described above.”

Article Eight: Credit and Collateral Requirements
Section 8.1(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

Section 8.1(b) is revised to delete in lines 5 and 7 “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 8.1(d) is amended by (i) changing “three (3) Business Days” to “five (5) Business Days”, and (ii) adding, before the comma in line five, “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

Section 8.2(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

Section 8.2(b) is revised to delete in lines 5 and 7 “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 8.2(c) is revised by adding the following paragraph after the first paragraph:

“Party A may at any time and from time to time (including at the time of a request by Party B for Performance Assurance) give notice to Party B of its intent to increase the amount of the guarantee provided by Party A’s Guarantor up to the amount set forth in the table on the Cover Sheet opposite the lowest Credit Rating for Party A’s Guarantor. No such increase shall become effective until Party A shall have provided Party B with a new guaranty or an amended guaranty (in form and substance acceptable to Party B). If the operation of the foregoing results in the sum of Party A Performance Assurance and Party A’s Collateral Threshold being in excess of its Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount) Party A shall be deemed to have requested that the Party A Performance Assurance be reduced accordingly.”

Section 8.2(d) is amended by (i) changing “three (3) Business Days” to “five (5) Business Days”, and (ii) adding, before the comma in line five, “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

Section 8.2(e) is deleted in its entirety and replaced with the following:

“(e) If specified on the Cover Sheet, Party A shall, at the request of Party B, deliver to Party B a guarantee in a form and an amount agreed to by both Parties and Party A’s Guarantor, which shall be delivered to Party B on or before ten (10) Business Days after the date on which the Parties and Party A’s Guarantor have agreed to the form and amount of the guarantee. In the event the Parties (each acting reasonably) and Party A’s Guarantor cannot agree to the form and amount for the guarantee to be delivered by Party A within ten (10) Business Days of Party B’s request, Party A may deliver Performance Assurance to Party B in substitution for the guarantee. For greater certainty, it shall not be an Event of Default if Party A does not deliver a guarantee to Party B absent a request by Party B and the agreement of the Parties and Party A’s Guarantor as to the form and amount of such guarantee.”

Article Ten: Miscellaneous

Section 10.2(iii) is revised by inserting the text “(including, with respect to Party B, the Joint Powers Agreement)” immediately after the words “governing documents”.

9
Section 10.11 is revised to read as follows:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose (i) the terms or conditions of a Transaction or any other information exchanged relating to a Transaction or potential Transaction, or (ii) the completed Cover Sheet to this Master Agreement, to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding, or (b) to the extent necessary to provide commercial terms of a Transaction, except the details pertaining to Seller or Buyer or either Party’s name, to a third party for the sole purpose of calculating a published index; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. This Section 10.11 is in addition to, and not in substitution for, any other written assurances of non-disclosure between and executed by the Parties.”

The following is added as Section 10.12:

“The following is added as Section 10.12:

“10.12 Waiver. FERC Standard of Review.

(A) Absent the agreement of all parties to the proposed change, the standard of review for changes to any provision of this Agreement (including all Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties herein, whether proposed by a party, a non-party or FERC acting sua sponte, shall solely 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

(B) The parties, for themselves and their successors and assigns, (y) agree that “public interest” standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with this Agreement and (z) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard of review, provided that this standard of review and the other provisions of this Section 10.13 shall only apply to proceedings before the FERC or appeals thereof.

(C) In addition, and notwithstanding the foregoing clauses (A) and (B), to the fullest extent permitted by applicable law, each party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any provision of this Agreement (including any applicable Transactions and/or
Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties, it being the express intent of the parties that, to the fullest extent permitted by applicable law, neither party shall unilaterally seek to obtain from FERC any relief changing the rate(s) and/or other material economic terms and conditions of their agreement(s), as set forth in this Agreement and in any Transactions or Confirmations, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 10.13 shall not apply, provided that, consistent with this Section 10.13 neither party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in clauses (A) and (B) above.

The following is added as Section 10.13:

“10.13 Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:

(i) The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.

(ii) If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.

(iii) If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.

(iv) If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon.
upon by the Parties ("Specified Dealers"), without regard to the quotations with the highest and lowest values, subject to the following qualifications:

A. If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.

B. If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.

C. If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.

(v) Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

(b) Definitions. For the purposes of this Section 10.14, the following terms shall have the following meanings:

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

(ii) “Exchange” means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

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

(iv) “Market Disruption Event” means, with respect to any Price Source, any of the following events:

A. the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;

B. the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;

C. the temporary or permanent discontinuance or unavailability of the Price Source;

D. the temporary or permanent closing of any Exchange or RTO
specified for determining a Floating Price; or

E. a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

(v) “Price Source” means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

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

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

(viii) “Trading Day” means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(c) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(d) Rounding. When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

The following is added as Section 10.14:

“10.14 Counterparts / Electronic Delivery.

This Agreement may be executed in counterparts each of which is an original, and all of which shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement and any Confirmation by facsimile or electronic
mail transmission (in portable document format (PDF)) shall be as effective as delivery of a manually executed signature page.”

The following is added as Section 10.15:

“10.15 Joint Powers Authority.

Party A hereby acknowledges and agrees that Party B is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party B’s members in connection with this Agreement.

Schedule M: Governmental Entity or Public Power System

Section A of Schedule M is hereby amended by deleting the defined term “Act” and replacing it with the following:

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

Section E of Schedule M is hereby amended by inserting the text “Governmental Entity or” immediately after the word “cover” in the second sentence of Section 3.6.

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

“G. The Parties agree to add the following sentence at the end of Section 10.6 – Governing Law:


Schedule P: Products and Related Definitions

The following definition and provision are added to Schedule P:

1. “CAISO Energy” means with respect to any Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator (“CAISO”) (as amended from time to time, the “Tariff”) for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” (as defined in the Tariff). A CAISO “Schedule Adjustment” (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the Tariff).

2. Other Products and Service Levels: In addition to the Products set out in Schedule P, the Parties may agree to use a product or service level defined by a different agreement (i.e., the Tariff, the WSPP Agreement, etc.) for a particular Transaction under this Master Agreement. If so, then the Transaction shall be subject to all the terms of this Master Agreement, except that (1) the product or service level definition, (2) force majeure, uncontrollable force definitions or other excuses for performance, (3) applicable regional reliability requirements and guidelines, and (4) other terms and conditions as mutually
agreed in writing, shall have the meaning given to them in the different agreement or in the applicable Confirmation.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

3 Phases Renewables Inc.  
By: ________________________________  
Name: ________________________________  
Title: ________________________________

Silicon Valley Clean Energy Authority, a California joint powers authority  
By: ________________________________  
Name: ________________________________  
Title: ________________________________

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

## COVER SHEET

### GENERAL TERMS AND CONDITIONS

#### ARTICLE ONE: GENERAL DEFINITIONS

#### ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

- 2.1 Transactions
- 2.2 Governing Terms
- 2.3 Confirmation
- 2.4 Additional Confirmation Terms
- 2.5 Recording

#### ARTICLE THREE: OBLIGATIONS AND DELIVERIES

- 3.1 Seller’s and Buyer’s Obligations
- 3.2 Transmission and Scheduling
- 3.3 Force Majeure

#### ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

- 4.1 Seller Failure
- 4.2 Buyer Failure

#### ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

- 5.1 Events of Default
- 5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts
- 5.3 Net Out of Settlement Amounts
- 5.4 Notice of Payment of Termination Payment
- 5.5 Disputes With Respect to Termination Payment
- 5.6 Closeout Setoffs
- 5.7 Suspension of Performance

#### ARTICLE SIX: PAYMENT AND NETTING

- 6.1 Billing Period
- 6.2 Timeliness of Payment
- 6.3 Disputes and Adjustments of Invoices
- 6.4 Netting of Payments
- 6.5 Payment Obligation Absent Netting
- 6.6 Security
- 6.7 Payment for Options

---

Version 2.1 (modified 4/25/00)

©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
6.8 Transaction Netting .......................................................... 32

ARTICLE SEVEN: LIMITATIONS ....................................................... 32
7.1 Limitation of Remedies, Liability and Damages............................... 32

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS .............. 33
8.1 Party A Credit Protection ..................................................... 33
8.2 Party B Credit Protection ..................................................... 35
8.3 Grant of Security Interest/Remedies ......................................... 37

ARTICLE NINE: GOVERNMENTAL CHARGES .................................. 37
9.1 Cooperation ........................................................................... 37
9.2 Governmental Charges .......................................................... 37

ARTICLE TEN: MISCELLANEOUS ..................................................... 38
10.1 Term of Master Agreement ...................................................... 38
10.2 Representations and Warranties ................................................. 38
10.3 Title and Risk of Loss .............................................................. 39
10.4 Indemnity ............................................................................. 39
10.5 Assignment ........................................................................... 40
10.6 Governing Law ...................................................................... 40
10.7 Notices .................................................................................. 40
10.8 General ................................................................................ 40
10.9 Audit ...................................................................................... 41
10.10 Forward Contract ................................................................. 41
10.11 Confidentiality ..................................................................... 41

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS .... 43

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS ....................... 46

EXHIBIT A: CONFIRMATION LETTER .................................................. 53
MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: June 24, 2016 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Energy America, LLC ("Party A")

All Notices:
Attn: Steve Dalicandro
Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046

Phone: 713-877-5828
E-mail:
Duns:
Federal Tax ID Number:

Invoices:
Attn: Manager Power Settlements
Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046
Phone: 713-904-7393
Facsimile: 713-904-7197
E-Mail: EMGPhysPowerSettlements@directenergy.com

Scheduling:
Attn: Raquel Elizondo
Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046
Phone: 713-877-3863 or 713-877-3669 24 Hours
E-Mail: realtimedesk@directenergy.com
ercotdeskall@directenergy.com

Confirmations:
Attn: Confirmations
Address: 12 Greenway Plaza, Suite 250
Houston, TX 77046
Phone: 713-877-3728
Facsimile: 713-877-3729
E-mail:

Silicon Valley Clean Energy Authority, a California joint powers authority ("Silicon Valley Clean Energy" or "Party B")

All Notices:
Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale, CA Zip: 94087

Attn: Tom Habashi
Phone: (408) 721-5301
Facsimile:
E-mail: tomh@svcleanenergy.org
Duns:
Federal Tax ID Number:

Invoices:
Attn: Silicon Valley Clean Energy Authority
Finance
Phone: (408) 721-5301
Facsimile:

Scheduling:
Phone: (916) 221-4327
Address: 604 Sutter Street, Suite 250
Folsom, CA 95630
Email: eric@zglobal.biz

Version 2.1 (modified 4/25/00)
© COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association

29403258v3
## Payments:

**Attn:** Manager Power Settlements  
**Address:** 12 Greenway Plaza, Suite 250  
Houston, TX 77046  
**Phone:** 713-904-7393  
**Facsimile:** 713-904-7197  
**E-Mail:** EMGPhysPowerSettlements@directenergy.com

## Wire Transfer:

|  
|  
|  

## Credit and Collections:

**Attn:** Head of Credit  
**Address:** 12 Greenway Plaza, Suite 250  
Houston, TX 77046  
**Phone:** 713-904-7004  
**Facsimile:**  
**E-Mail:** creditnotices@directenergy.com

With additional Notices of an Event of Default to:  
cc: Legal Notices:  
**Attention:** V.P. Head of Commercial Legal  
**Address:** 12 Greenway Plaza, Suite 250  
Houston, TX 77046  
**Phone:** 713-877-3851  
**Facsimile:** 713-621-5648

## Payments:

**Attn:** Silicon Valley Clean Energy Authority Finance  
**Phone:** (408) 721-5301  
**Facsimile:**  
**E-Mail:**  

## Wire Transfer:

| BNK: |  
| ABA: |  
| ACCT: |  

## Credit and Collections:

**Attn:** Silicon Valley Clean Energy Authority Finance  
**Phone:** (408) 721-5301  
**Facsimile:**

With additional Notices of an Event of Default or Potential Event of Default to:  
**Attn:**  
**Phone:**  
**Facsimile:**
The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff: FERC Electric Tariff 1848

Dated: May 29, 2002

Docket Number: ER11-

Original Volume 1

Party B Tariff: N/A

---

**Article Two**

Transaction Terms and Conditions

[x] Optional provision in Section 2.4. If not checked, inapplicable.

---

**Article Four**

Remedies for Failure to Deliver or Receive

[x] Accelerated Payment of Damages. If not checked, inapplicable.

---

**Article Five**

Events of Default; Remedies

[x] Cross Default for Party A:

[] Party A: __________________

[x ] Other Entity: Centrica plc

Cross Default Amount

[x] Cross Default for Party B:

[x] Party B: __________________

Cross Default Amount

[] Other Entity: __________________

Cross Default Amount

---

5.6 Closeout Setoff

[x] Option A (Applicable if no other selection is made.)

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

[] Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A

[] Option B Specify: __________________

[x] Option C Specify: __________________

(1) The annual report containing audited consolidated financial statements for such fiscal year of Silicon Valley Clean Energy as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such
financial statements are available at www.svcleanenergy.com, and (2) quarterly unaudited financial statements for Silicon Valley Clean Energy as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B’s fiscal year ends June 30.

(b) Credit Assurances:

(c) Collateral Threshold:

If applicable, complete the following:

Party B Collateral Threshold: $_________; provided, however, that Party B’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_________

Party B Rounding Amount: $_________

(d) Downgrade Event:

[ ] Not Applicable
[ ] Applicable

If applicable, complete the following:

[ ] It shall be a Downgrade Event for Party B if Party B’s Credit Rating falls below _________ from S&P or _________ from Moody’s or if Party B is not rated by either S&P or Moody’s.

[ ] Other:
Specify:_____________________________________

(e) Guarantor for Party B: N/A_________

Guarantee Amount:_____________________________________

4

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
8.2 **Party B Credit Protection:**

(a) **Financial Information:**

[ ] Option A
[ ] Option B Specify: 
[ ] Option C Specify: 

The annual report containing audited consolidated financial statements for such fiscal year of Party A’s Guarantor as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A’s Guarantor and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A’s Guarantor, and such request will be deemed to have been filled if such financial statements are available at www.centrica.com. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) **Credit Assurances:**

[ ] Not Applicable
[ ] Applicable

(c) **Collateral Threshold:**

[ ] Not Applicable
[ ] Applicable

If applicable, complete the following:

Party A Collateral Threshold: 

provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: As set forth in the applicable Confirmation.

Party A Rounding Amount: 

(d) **Downgrade Event:**

[ ] Not Applicable
[ ] Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: **Centrica plc**

| Guarantee Amount: |

| **Article 10** | Confidentiality | [X] Confidentiality Applicable  If not checked, inapplicable. |

| **Schedule M** |

| [X] Party A is a Governmental Entity or Public Power System |
| [X] Party B is a Governmental Entity or Public Power System |
| [X] Add Section 3.6. If not checked, inapplicable |
| [X] Add Section 8.4. If not checked, inapplicable. Collateral description as follows: |

**Other Changes**

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

> “Notwithstanding the foregoing, the Parties hereby agree and acknowledge that the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith and shall exclude, in the case of Party A, any such person that is not organized or existing under the jurisdiction of Canada or the United States or a political subdivision thereof.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.12 is amended by deleting the word “issues” and replacing it with “issuer”.

4) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

5) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.50 (Recording) Delete the reference to “Section 2.4” and
replace it with “Section 2.5”.

9) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

10) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

11) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

12) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “as determined in accordance with Section 5.2.”

13) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

14) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

15) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

16) Section 2.3 is hereby deleted in its entirety and replaced with the following:
2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

17) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

18) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.”

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

20) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

21) In Section 5.1(g),

(a) delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section,

(b) and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

22) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

23) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

“(i) during any consecutive ninety (90) day period, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, under any and all Transactions, regarding which the Seller shall be deemed to be the Defaulting Party, and Buyer shall also
be entitled to its remedies under Section 4.1;”

“(j) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice; or”

“(k) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within ninety (90) days.”

“(l) Either Party: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period; or (ii) disaffirms, disclaims or repudiates any Security Document.

“(m) A Party or its Guarantor suffering or being the subject of a default, event of default, termination event, breach or other similar condition or event (howsoever expressed) that has not been remedied within the applicable grace periods under any other agreement or instrument (including, without limitation, commodity and financial derivative agreements or transactions) between a Party or one of its Affiliates and the other Party or one of its Affiliates, where the result of such event has been the termination and liquidation of transactions and the acceleration of amounts due thereunder.”

24) Section 5.2 is amended by:

(i) changing in line 3 “right (i) to” to “right to (i)”;

(ii) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(iii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of a Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money for such Transaction), then for purposes of the calculation

9

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
of the Termination Payment such Settlement Amount shall be deemed to be zero dollars ($0.00).”

25) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

26) **Section 5.5 – Disputes With Respect to Termination Payment**

Add the following at the end of Section 5.5:

“(a) **Senior Officers.** Each of the Parties shall upon five days notice from the other Party designate in writing to the other a senior officer, who shall be authorized to resolve any dispute relating to the calculation of the Termination Payment with respect to Terminated Transactions following the designation of an Early Termination Date (“Dispute”). If any Dispute is not resolved within fifteen days following receipt by a Party of notice of a Dispute, the Parties may pursue any other right or remedy available at law, in equity or under this Agreement, subject to Section 7.1, to resolve the Dispute. The Parties shall (1) attempt to resolve all Disputes promptly and equitably; and (2) provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such Dispute.

(b) **Preservation of Rights and Remedies.** Nothing in this Section 5.5 shall preclude, restrict, limit or stop any right or remedy that, subject to Section 7.1, may be available to a Party at law, in equity or under this Agreement in connection with any claim, action, cause of action or indemnity which is not a Dispute as defined in Section 5.5(a) above.”

27) In Section 5.7, delete “(a)” and “or (b) a Potential Event of Default” from the second line.

28) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

29) **Section 7.1 shall be amended by:**

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

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

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

30) In Sections 8.1(b) and 8.2(b), change “three (3) Business Days” to “five (5) Business Days”.

31) In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days”.

Section 8.2(d). Before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within three (3) Business Days of receipt of notice”.

32) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment.”

33) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

34) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

35) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“It is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all
payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

36) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

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

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

The Parties intend for the waiver in clause (a) above to be enforced to the
fullest extent permitted under applicable law as in effect from time to time.

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

38) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

39) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of
either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section
10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the
obligation of either Party to make payments hereunder,
(vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also
survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement
may be signed in any number of counterparts with the same effect as
if the signatures to counterparty were upon a single instrument.
Delivery of an executed signature page of this Master Agreement and
any Confirmation by facsimile or electronic mail transmission shall be
effective as delivery of a manually executed signature page.”

40) In section 10.9 insert the words “copies of” after the word “examine”
in line 2.

41) Section 10.10 shall be amended by adding the following after the last
sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the
other Party is not a “utility” as such term is used in 11 U.S.C. Section
366, and each Party waives and agrees not to assert the applicability of
the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding
wherein such Party is a debtor. In any such proceeding, each Party
further waives the right to assert that the other Party is a provider of
last resort.”

42) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master
Agreement” immediately before the phrase “to a third party” in line
three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,”
immediately after the phrase “counsel, accountants, or advisors” in
(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word ”Confidential”. The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

43) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the
contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the Mobile Sierra “public interest” standard of review set forth in Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al. No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.”

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

44) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

45) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to
Party B a certificate, dated as of the Effective Date and signed by an authorized signatory of Party A, certifying as to the completeness and correctness of attached copies of (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

46) The following shall be added as a new Section 10.15:

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

47) The following new Section shall be added as Section 10.16:

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

48) The following new Section shall be added as Section 10.17:

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

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to
agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below:"

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

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

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

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

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

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such
amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

49) The following new Section shall be added as Section 10.18:

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

50) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.

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

TBC

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: ________________________________
Name: ______________________________
Title: ______________________________

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

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) 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, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.
1.10 “Contract Price” means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 “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 issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force
Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 “Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 “Master Agreement” has the meaning set forth on the Cover Sheet.

1.30 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.31 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereo. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless
otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.
1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.
1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such
Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party’s Confirmation within two (2) Business Days of receipt, Seller’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller’s Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer’s Confirmation was sent prior to Seller’s Confirmation, in which case Buyer’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties’ agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller’s and Buyer’s Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with
its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.
ARTICLE FIVE:  EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) 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;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
(h) with respect to such Party’s Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor’s guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.
5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no
event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

**ARTICLE SIX: PAYMENT AND NETTING**

6.1 **Billing Period.** Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 **Timeliness of Payment.** Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 **Disputes and Adjustments of Invoices.** 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, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.
6.4 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 pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), 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.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party’s performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

(a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

(b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS 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. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.
Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B’s creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) (“Party B Performance Assurance”), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been
liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) **Downgrade Event.** If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 **Party B Credit Protection.** The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) **Financial Information.** Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.
Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A’s creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A’s Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A’s Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.
(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor’s obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from
the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party
to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence
on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30
days’ prior written notice; provided, however, that such termination shall not affect or excuse the
performance of either Party under any provision of this Master Agreement that by its terms
survives any such termination and, provided further, that this Master Agreement and any other
documents executed and delivered hereunder shall remain in effect with respect to the
Transaction(s) entered into prior to the effective date of such termination until both Parties have
fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that
have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering
into each Transaction, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws
of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its
obligations under this Master Agreement and each Transaction (including
any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and
each Transaction (including any Confirmation accepted in accordance
with Section 2.3) are within its powers, have been duly authorized by all
necessary action and do not violate any of the terms and conditions in its
governing documents, any contracts to which it is a party or any law, rule,
regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation
accepted in accordance with Section 2.3), and each other document
executed and delivered in accordance with this Master Agreement
constitutes its legally valid and binding obligation enforceable against it in
accordance with its terms; subject to any Equitable Defenses.

(v) it is not Bankrupt and there are no proceedings pending or being
contemplated by it or, to its knowledge, threatened against it which would
result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its
Affiliates any legal proceedings that could materially adversely affect its
ability to perform its obligations under this Master Agreement and each
Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;

(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first
occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power
sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
SCHEDULE M

(THE SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

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

   “Collateral Agent” has the meaning in the Security Documents.

   “Depositary Bank” has the meaning in the Security Documents.

   “Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

   “Secured Account” means the Lockbox Account (as defined in the Security Agreement).

   “Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

   “Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

   “Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement, among the Depositary Bank, Party B and the Collateral Agent.

   “Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’s obligations under this Master Agreement for the entire Delivery Period.

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

   If the Claiming Party is Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

43

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

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

Section 3.4 Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide the Party A (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.’’

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

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depositary Bank and such notice shall include information regarding the replacement Secured Account.

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

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance.

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to
which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into ______________ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. **Prescheduling and Notification.** Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. **Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.”** In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

   i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider’s transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer’s non-performance, then at Seller’s choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer’s purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer’s purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer’s purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

   ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

   iii. Seller’s obligation to schedule and deliver the Product at an ADI is subject to Buyer’s obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

   iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider’s transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated
congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer’s Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider’s notice of rejection (“Buyer’s Rejection Notice”). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer’s own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer’s purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer’s own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer’s purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller’s inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer’s Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller’s delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.
D. **No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer’s Rejection Notice.** If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer’s Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller’s delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. **Transmission.**

A. **Seller’s Responsibilities.** Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller’s scheduled delivery to Buyer is interrupted as a result of Buyer’s attempted transmission of the Product beyond the Receiving Transmission Provider’s system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. **Buyer’s Responsibilities.** Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller’s rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. **Force Majeure.** An “Into” Product shall be subject to the “Force Majeure” provisions in Section 1.23.

6. **Multiple Parties in Delivery Chain Involving a Designated Interface.** Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers (“Other Sellers”), the first of which Other Sellers shall be causing the Product to be generated from a source (“Source Seller”) and/or (2) Buyer may be selling the Product to a succession of other buyers (“Other Buyers”), the last of which Other Buyers shall be using the Product to serve its energy needs (“Sink Buyer”). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:
A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product.

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence
of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on __________, ___ between __________________________ (“Party A”) and _____________________ (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: __________________________________________

Buyer: __________________________________________

Product:

[] Into _______________, Seller’s Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm
  (Specify System: _________________________________)

[] Unit Firm
  (Specify Unit(s): _________________________________)

[] Other __________________________

[] Transmission Contingency (If not marked, no transmission contingency)
  [ ] FT-Contract Path Contingency [ ] Seller [ ] Buyer
  [ ] FT-Delivery Point Contingency [ ] Seller [ ] Buyer
  [ ] Transmission Contingent [ ] Seller [ ] Buyer
  [ ] Other transmission contingency
  (Specify: _________________________________)

Contract Quantity: _________________________________

Delivery Point: _________________________________

Contract Price: _________________________________

Energy Price: _________________________________

Other Charges: _________________________________
Confirmation Letter
Page 2

Delivery Period: _______________________________________________________________

Special Conditions: ____________________________________________________________

Scheduling: ________________________________________________________________

Option Buyer: ________________________________________________________________

Option Seller: ______________________________________________________________

Type of Option: ______________________________________________________________

Strike Price: ________________________________________________________________

Premium: _________________________________________________________________

Exercise Period: _____________________________________________________________

This confirmation letter is being provided pursuant to and in accordance with the Master
Power Purchase and Sale Agreement dated ____________ (the “Master Agreement”) between
Party A and Party B, and constitutes part of and is subject to the terms and provisions of such
Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them
in the Master Agreement.

[Party A] [Party B]

Name: __________________________ Name: __________________________

Title: __________________________ Title: __________________________

Phone No: ______________________ Phone No: ______________________

Fax: ___________________________ Fax: ___________________________
Master Power Purchase & Sale Agreement
# MASTER POWER PURCHASE AND SALES AGREEMENT

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Cover Sheet</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Terms and Conditions</strong></td>
<td>19</td>
</tr>
<tr>
<td><strong>Article One:</strong> General Definitions</td>
<td>19</td>
</tr>
<tr>
<td><strong>Article Two:</strong> Transaction Terms and Conditions</td>
<td>24</td>
</tr>
<tr>
<td>2.1 Transactions</td>
<td>24</td>
</tr>
<tr>
<td>2.2 Governing Terms</td>
<td>24</td>
</tr>
<tr>
<td>2.3 Confirmation</td>
<td>25</td>
</tr>
<tr>
<td>2.4 Additional Confirmation Terms</td>
<td>25</td>
</tr>
<tr>
<td>2.5 Recording</td>
<td>25</td>
</tr>
<tr>
<td><strong>Article Three:</strong> Obligations and Deliveries</td>
<td>26</td>
</tr>
<tr>
<td>3.1 Seller’s and Buyer’s Obligations</td>
<td>26</td>
</tr>
<tr>
<td>3.2 Transmission and Scheduling</td>
<td>26</td>
</tr>
<tr>
<td>3.3 Force Majeure</td>
<td>26</td>
</tr>
<tr>
<td><strong>Article Four:</strong> Remedies for Failure to Deliver/Receive</td>
<td>26</td>
</tr>
<tr>
<td>4.1 Seller Failure</td>
<td>26</td>
</tr>
<tr>
<td>4.2 Buyer Failure</td>
<td>26</td>
</tr>
<tr>
<td><strong>Article Five:</strong> Events of Default; Remedies</td>
<td>27</td>
</tr>
<tr>
<td>5.1 Events of Default</td>
<td>27</td>
</tr>
<tr>
<td>5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts</td>
<td>28</td>
</tr>
<tr>
<td>5.3 Net Out of Settlement Amounts</td>
<td>28</td>
</tr>
<tr>
<td>5.4 Notice of Payment of Termination Payment</td>
<td>29</td>
</tr>
<tr>
<td>5.5 Disputes With Respect to Termination Payment</td>
<td>29</td>
</tr>
<tr>
<td>5.6 Closeout Setoffs</td>
<td>29</td>
</tr>
<tr>
<td>5.7 Suspension of Performance</td>
<td>30</td>
</tr>
<tr>
<td><strong>Article Six:</strong> Payment and Netting</td>
<td>30</td>
</tr>
<tr>
<td>6.1 Billing Period</td>
<td>30</td>
</tr>
<tr>
<td>6.2 Timeliness of Payment</td>
<td>30</td>
</tr>
<tr>
<td>6.3 Disputes and Adjustments of Invoices</td>
<td>30</td>
</tr>
<tr>
<td>6.4 Netting of Payments</td>
<td>31</td>
</tr>
<tr>
<td>6.5 Payment Obligation Absent Netting</td>
<td>31</td>
</tr>
<tr>
<td>6.6 Security</td>
<td>31</td>
</tr>
</tbody>
</table>
6.7 Payment for Options .......................................................................................... 31
6.8 Transaction Netting.......................................................................................... 31

ARTICLE SEVEN: LIMITATIONS ........................................................................... 32
7.1 Limitation of Remedies, Liability and Damages ........................................... 32

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS .................... 32
8.1 Party A Credit Protection ............................................................................... 32
8.2 Party B Credit Protection ............................................................................... 34
8.3 Grant of Security Interest/Remedies .............................................................. 36

ARTICLE NINE: GOVERNMENTAL CHARGES ............................................... 37
9.1 Cooperation ..................................................................................................... 37
9.2 Governmental Charges ................................................................................... 37

ARTICLE TEN: MISCELLANEOUS ....................................................................... 37
10.1 Term of Master Agreement ......................................................................... 37
10.2 Representations and Warranties ................................................................. 37
10.3 Title and Risk of Loss ................................................................................... 39
10.4 Indemnity ....................................................................................................... 39
10.5 Assignment .................................................................................................... 39
10.6 Governing Law .............................................................................................. 39
10.7 Notices .......................................................................................................... 39
10.8 General ........................................................................................................... 40
10.9 Audit .............................................................................................................. 40
10.10 Forward Contract ......................................................................................... 41
10.11 Confidentiality .............................................................................................. 41

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS ....... 43
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS .............................. 45
EXHIBIT A: CONFIRMATION LETTER ............................................................... 53
MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: June 24, 2016 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Exelon Generation Company, LLC ("Counterparty" or "Party A")

Silicon Valley Clean Energy Authority, a California joint powers authority ("Silicon Valley Clean Energy" or "Party B")

All Notices:
Attn: Contract Administration
Address: 1310 Point Street, 8th Floor
Baltimore, MD 21202
Phone: 410-470-3500
Facsimile: 443-213-3556
Duns:
Federal Tax ID Number:

All Notices:
Attn: Tom Habashi
Address: 333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Phone: (408) 721-5301
Facsimile: 
E-mail: tomh@svcleanenergy.org
Duns:
Federal Tax ID Number:

Invoices:
Attn: Billing Group
Phone: 410-470-3737
Facsimile: 410-468-3540

Invoices:
Attn: Silicon Valley Clean Energy Authority
Finance
Address: 604 Sutter Street, Suite 250
Folsom, CA 95630
Phone: (408) 721-5301
Facsimile:
E-mail: eric@zglobal.biz

Scheduling:
Attn: Scheduling Desk
Phone: 410-468-3530
Facsimile: 410-468-3540

Scheduling:
Phone: (916) 221-4327
Address: 604 Sutter Street, Suite 250,
Folsom, CA 95630
Email: eric@zglobal.biz

Confirmations:
Attn: Confirmations Group
Phone: 410-470-3738
Facsimile: 410-468-3540
E-mail: confirmationsmanager@constellation.com

Payments:
Attn: Payments Group
Phone: 410-470-3737
Facsimile: 410-468-3540

Payments:
Attn: Silicon Valley Clean Energy Authority
Finance
Address: 333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Phone: (408) 721-5301
Facsimile:
E-mail
Wire Transfer:
BNK: ____________________________
ABA: ____________________________
ACCT: ____________________________

Credit and Collections:
Attn: Credit Risk Department
Phone: 410-470-6000
Facsimile: 443-213-3215

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: General Counsel
Phone: 410-470-3500
Facsimile: 443-213-3556
The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

| Party A Tariff | Tariff: FERC Electric Tariff | Dated: March 1, 2014 | Docket Number: ER00-3251 |
| Party B Tariff | N/A |

**Article Two**

Transaction Terms and Conditions

- [x] Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

Remedies for Failure to Deliver or Receive

- [x] Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

Events of Default; Remedies

- [x] Cross Default for Party A:
  - Party A: Exelon Generation Company, LLC
  - Cross Default Amount
  - [ ] Other Entity: Cross Default Amount

- [x] Cross Default for Party B:
  - Party B: Silicon Valley Clean Energy Authority
  - Cross Default Amount
  - [ ] Other Entity: Cross Default Amount

5.6 Closeout Setoff

- [x] Option A (Applicable if no other selection is made.)
  - [ ] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: 

- [ ] Option C (No Setoff)

**Article 8**

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

- [ ] Option A
- [ ] Option B Specify: 
- [x] Option C Specify: 

(1) The annual report containing audited consolidated financial statements for such fiscal year of Silicon Valley Clean Energy as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such
financial statements are available at www.svcleanenergy.com, and (2) quarterly unaudited financial statements for Silicon Valley Clean Energy as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B’s fiscal year ends June 30.

(b) Credit Assurances:

[ ] Not Applicable

[ ] Applicable

(c) Collateral Threshold:

[ ] Not Applicable

[ ] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $ __________; provided, however, that Party B’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $ __________

Party B Rounding Amount: $ __________

(d) Downgrade Event:

[ ] Not Applicable

[x] Applicable

If applicable, complete the following:

[ ] It shall be a Downgrade Event for Party B if Party B’s Credit Rating falls below _________ from S&P or _________ from Moody’s or if Party B is not rated by either S&P or Moody’s.

[x] Other:

Specify: Downgrade Event threshold as set forth in the Applicable Confirmation.

(e) Guarantor for Party B: N/A

__________________________________________
8.2 Party B Credit Protection:

(a) Financial Information:

[x] Option A
[ ] Option B Specify: _______________________
[ ] Option C Specify:

The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A, and such request will be deemed to have been filled if such financial statements are available at www.exeloncorp.com. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

[ ] Not Applicable
[x] Applicable

(c) Collateral Threshold:

[ ] Not Applicable
[x] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $30,000,000; provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: As set forth in the Applicable Confirmation.

Party A Rounding Amount: _______________________

(d) Downgrade Event:

[ ] Not Applicable
[x] Applicable

If applicable, complete the following:

[x] It shall be a Downgrade Event for Party A if Party A’s Credit Rating falls below BBB- from S&P or Baa3 from Moody’s or if
Party A is not rated by either S&P or Moody’s.

[ ] Other:
   Specify: It shall be a Downgrade Event for Party A if Party A’s Guarantor’s Credit Rating falls below ___ from S&P or ___ from Moody’s or if Party A is not rated by either S&P or Moody’s.

(e) Guarantor for Party A: N/A
   Guarantee Amount: N/A

---

**Article 10**

Confidentiality

[ ] Confidentiality Applicable
   If not checked, inapplicable.

**Schedule M**

[ ] Party A is a Governmental Entity or Public Power System
[x] Party B is a Governmental Entity or Public Power System
[ ] Add Section 3.6. If not checked, inapplicable
[x] Add Section 8.4. If not checked, inapplicable. Collateral description as follows: See Schedule M

**Other Changes**

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

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

   “Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party A, Baltimore Gas & Electric Company, CNEG Holdings, LLC, CNE Gas Holdings, LLC, CNE Gas Supply, LLC, PECO Energy Company, Commonwealth Edison Company, Delmarva Power & Light Company, Atlantic City Electric Company and Potomac Electric Power Company, and with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

4) Section 1.24 is amended by adding before the period at the end thereof
the following: “in accordance with Section 5.2”.

5) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

6) Section 1.46 is deleted in its entirety.

7) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

8) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

9) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

10) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

11) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

12) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

13) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a
certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

14) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

15) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

16) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.”

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

18) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

19) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

20) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

21) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:
“(i) during any consecutive ninety (90) day period, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, under any and all Transactions, regarding which the Seller shall be deemed to be the Defaulting Party, and Buyer shall also be entitled to its remedies under Section 4.1;”

“(j) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice; or”

“(k) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within ninety (90) days.”

“(l) Either Party: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below in Schedule M) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period; or (ii) disaffirms, disclaims or repudiates any Security Document.

“(m) A Party or its Guarantor suffering or being the subject of a default, event of default, termination event, breach or other similar condition or event (howsoever expressed) that has not been remedied within the applicable grace periods under any other agreement or instrument (including, without limitation, commodity and financial derivative agreements or transactions) between a Party or one of its Affiliates and the other Party or one of its Affiliates, where the result of such event has been the termination and liquidation of transactions and the acceleration of amounts due thereunder.”

22) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without
limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars ($0.00).”

23) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

24) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

25) Section 7.1 shall be amended by:
   
   (i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;
   
   (ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and
   
   (iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

26) In Sections 8.1(b) and 8.2(b), change “three (3) Business Days” to “five (5) Business Days”.

27) In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days”.

Section 8.2(d). Before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

28) Section 8.4 is added as follows:

   “In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment plus the Independent Amount.”

29) In Section 10.2, delete the phrase “or Potential Event of Default” from
Section 10.2(vii).

30) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

31) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

32) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or
assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

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

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

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

34) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

35) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the
obligation of either Party to make payments hereunder, (vii) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

36) In section 10.9 insert the words “copies of” after the word “examine” in line 2.

37) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

38) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise
protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

39) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into hereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the Mobile Sierra "public interest" standard of review set forth in Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al. No. 08-674, 130 S.Ct. 693 (2010) ("NRG Order"). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.”

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

40) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

41) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B a certificate, dated as of the Effective Date and signed by an authorized signatory of Party A, certifying as to the completeness and correctness of attached copies of (i) a certificate of good standing issued by the Pennsylvania Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

42) The following shall be added as a new Section 10.15:

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

43) The following new Section shall be added as Section 10.16:

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

44) The following new Section shall be added as Section 10.17:

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

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.
“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

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

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

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

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

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

45) The following new Section shall be added as Section 10.18:

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

46) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.

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

EXELON GENERATION COMPANY, LLC
By: ___________________________  By: ___________________________
Name: _________________________  Name: _________________________
Title: __________________________  Title: __________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

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

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) 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, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.
1.10 “Contract Price” means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 “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 issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of
due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 “Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 “Master Agreement” has the meaning set forth on the Cover Sheet.

1.30 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.31 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the
relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.
1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall
have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any
inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party’s Confirmation within two (2) Business Days of receipt, Seller’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller’s Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer’s Confirmation was sent prior to Seller’s Confirmation, in which case Buyer’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties’ agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.
ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller’s and Buyer’s Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be
due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

**ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) 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;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of becoming, due or demandable under the terms of any such agreement or instrument;
time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party’s Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor’s guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of
security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of
accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. 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, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent
overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 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 pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), 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.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party’s performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

(a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

(b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.
Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS 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. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.
(a) **Financial Information.** Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) **Credit Assurances.** If Party A has reasonable grounds to believe that Party B’s creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) **Collateral Threshold.** If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) (“Party B Performance Assurance”), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three
(3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.
Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A’s creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A’s Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A’s Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.
For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) **Downgrade Event.** If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 **Grant of Security Interest/Remedies.** To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor’s obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days’ prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its
governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day,
and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.
10.10 **Forward Contract.** The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 **Confidentiality.** If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
SCHEDULE M

(THE SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

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

“Collateral Agent” has the meaning in the Security Documents.

“Depositary Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement, the Account Control Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement or instrument documenting the security of Party A in connection with a Transaction, as the same may be amended, restated, modified, replaced, extended, or supplemented from time to time.

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.
If the Claiming Party is Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

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

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

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

Section 3.4 Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide Party A (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.

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

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depositary Bank and such notice shall include information regarding the replacement Secured Account.

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


SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS
“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance.

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an
amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into ___________ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider’s transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer’s non-performance, then at Seller’s choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer’s purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer’s purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer’s purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller’s obligation to schedule and deliver the Product at an ADI is subject to Buyer’s obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider’s transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and
Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer’s Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider’s notice of rejection (“Buyer’s Rejection Notice”). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer’s own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer’s purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer’s own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer’s purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller’s inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer’s Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller’s delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.
D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer’s Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer’s Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller’s delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller’s Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller’s scheduled delivery to Buyer is interrupted as a result of Buyer’s attempted transmission of the Product beyond the Receiving Transmission Provider’s system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer’s Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller’s rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An “Into” Product shall be subject to the “Force Majeure” provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers (“Other Sellers”), the first of which Other Sellers shall be causing the Product to be generated from a source (“Source Seller”) and/or (2) Buyer may be selling the Product to a succession of other buyers (“Other Buyers”), the last of which Other Buyers shall be using the Product to serve its energy needs (“Sink Buyer”). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:
A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii)
by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.
EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on ___________, ___ between __________________________ ("Party A") and _____________________ ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: ________________________________
Buyer: ________________________________

Product:
[] Into _________________, Seller’s Daily Choice
[] Firm (LD)
[] Firm (No Force Majeure)
[] System Firm
(Specify System: ________________________________)
[] Unit Firm
(Specify Unit(s): ________________________________)
[] Other ________________________________
[] Transmission Contingency (If not marked, no transmission contingency)
[] FT-Contract Path Contingency [ ] Seller [ ] Buyer
[] FT-Delivery Point Contingency [ ] Seller [ ] Buyer
[] Transmission Contingent [ ] Seller [ ] Buyer
[] Other transmission contingency
(Specify: ________________________________)

Contract Quantity: ________________________________
Delivery Point: ________________________________
Contract Price:
Energy Price: ________________________________
Other Charges: ________________________________
Confirmation Letter
Page 2

Delivery Period: _____________________________________________________________

Special Conditions: _________________________________________________________

Scheduling: _______________________________________________________________

Option Buyer: ______________________________________________________________

Option Seller: ______________________________________________________________

Type of Option: _____________________________________________________________

Strike Price: _______________________________________________________________

Premium: _________________________________________________________________

Exercise Period: _____________________________________________________________

This confirmation letter is being provided pursuant to and in accordance with the Master
Power Purchase and Sale Agreement dated ____________ (the “Master Agreement”) between
Party A and Party B, and constitutes part of and is subject to the terms and provisions of such
Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them
in the Master Agreement.

[Party A]                                [Party B]

Name: _______________________________   Name: _______________________________
Title: ______________________________   Title: ______________________________
Phone No: ___________________________  Phone No: ___________________________
Fax: _________________________________  Fax: _______________________________
MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: November __, 2016 (“Effective Date”). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this Master Agreement are the following:

**Morgan Stanley Capital Group, Inc. (“Party A”)**

**Silicon Valley Clean Energy Authority, a California joint powers authority (“Silicon Valley Clean Energy” or “Party B”)**

All Notices: [To be completed]

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
<tr>
<td>Duns:</td>
<td></td>
</tr>
<tr>
<td>Federal Tax ID Number:</td>
<td></td>
</tr>
</tbody>
</table>

**All Notices:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
<tr>
<td>Duns:</td>
<td></td>
</tr>
<tr>
<td>Federal Tax ID Number:</td>
<td></td>
</tr>
</tbody>
</table>

**Invoices:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>E-Mail:</td>
<td></td>
</tr>
</tbody>
</table>

**Invoices:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>E-Mail:</td>
<td></td>
</tr>
</tbody>
</table>

**Scheduling:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>E-Mail:</td>
<td></td>
</tr>
</tbody>
</table>

**Scheduling:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>E-Mail:</td>
<td></td>
</tr>
</tbody>
</table>

**Confirmations:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
</tbody>
</table>

**Confirmations:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
</tbody>
</table>
The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Party B Tariff</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Article Two**

Transaction Terms and Conditions

- [x] Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

Remedies for Failure to Deliver or Receive

- [x] Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

Events of Default; Remedies

- [x] Cross Default for Party A:
  - Party A: __________________________
  - Cross Default Amount $__________
  - Other Entity: Morgan Stanley

- [x] Cross Default for Party B:
  - Party B: __________________________
  - Cross Default Amount $__________
  - Other Entity: ______________________

5.6 Closeout Setoff

- [x] Option A (Applicable if no other selection is made.)
  - Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: ______________

- [ ] Option C (No Setoff)

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- [ ] Option A
- [ ] Option B Specify: ______________________
- [x] Option C Specify: ______________________

(1) The annual report containing audited consolidated financial statements for such fiscal year of Silicon Valley Clean Energy as soon as practicable after demand, but in no event later than 120 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at [www.svcleanenergy.com](http://www.svcleanenergy.com), and (2) quarterly unaudited financial statements for Silicon Valley Clean Energy as soon as practicable upon demand, but in no event later than 60 days after the applicable quarter. In all cases the statements shall be for the most recent accounting...
period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B’s fiscal year ends June 30.

(b) Credit Assurances:

(c) Collateral Threshold:

If applicable, complete the following:

Party B Collateral Threshold: provided, however, that Party B’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $

Party B Rounding Amount: $

(d) Downgrade Event:

[x] Not Applicable
[ ] Applicable

If applicable, complete the following:

[ ] It shall be a Downgrade Event for Party B if Party B’s Credit Rating falls below _______ from S&P or _______ from Moody’s or if Party B is not rated by either S&P or Moody’s.

[ ] Other:
Specify:

(e) Guarantor for Party B: N/A

Guarantee Amount:

8.2 Party B Credit Protection:

(a) Financial Information:

[ ] Option A
[ ] Option B Specify:
[x] Option C Specify: Morgan Stanley

The annual report containing audited consolidated financial statements for

5

©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
such fiscal year of Party A’s Guarantor as soon as practicable after demand, but in no event later than 120 days after the end of each annual period of Party A’s Guarantor and unaudited semi-annual financials within 60 days after the end of each semi-annual period of Party A’s Guarantor, and such request will be deemed to have been filled if such financial statements are available at www.morganstanley.com, or at www.sec.gov. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:
- [X] Not Applicable
- [] Applicable

(c) Collateral Threshold:
- [X] Not Applicable
- [] Applicable

If applicable, complete the following:

Party A Collateral Threshold: As set forth in the Applicable Confirmation.

Party A Independent Amount: As set forth in the Applicable Confirmation.

Party A Rounding Amount: $

(d) Downgrade Event:
- [] Not Applicable
- [x] Applicable

If applicable, complete the following:

[x] It shall be a Downgrade Event for Party A only if the Credit Rating of Party A’s Guarantor, Morgan Stanley, falls below BBB- from S&P or Baa3 from Moody’s or if the unsecured, senior long-term debt obligations of Morgan Stanley ceases to be rated by either S&P or Moody’s.

[] Other:
Specify: It shall be a Downgrade Event for Party A if Party A’s Guarantor’s Credit Rating falls below ___ from S&P or ___ from Moody’s or if Party A is not rated by either S&P or Moody’s.
(e) Guarantor for Party A: Morgan Stanley

Guarantee Amount: [Redacted]

**Article 10**
Confidentiality

[X] Confidentiality Applicable

If not checked, inapplicable.

**Schedule M**

- [ ] Party A is a Governmental Entity or Public Power System
- [X] Party B is a Governmental Entity or Public Power System
- [ ] Add Section 3.6. If not checked, inapplicable
- [ ] Add Section 8.4. If not checked, inapplicable. Collateral description as follows:

**Other Changes**

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

> “Notwithstanding the foregoing, the Parties hereby agree and acknowledge that the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith and shall exclude, in the case of Party A, any such person that is not organized or existing under the jurisdiction of Canada or the United States or a political subdivision thereof and Morgan Stanley Derivative Products Inc.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.12 is amended by deleting the word “issues” and replacing it with “issuer”.

4) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two”.

5) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank”.

7) Section 1.50 (Recording) Delete the reference to “Section 2.4” and replace it with “Section 2.5”.

8) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the

---

7

Version 2.1 (modified 4/25/06)

©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
fifth line and replacing it with the phrase “absent a purchase”.

9) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

10) Section 1.53 is amended by:

   (i) deleting the phrase “at the Delivery Point” from the second line;

   (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

   (iii) inserting after the word “liability” in the ninth line the following:

   “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

11) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

12) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

13) Section 1.61 is amended by adding the following definition: ““Act” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).”

14) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

15) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

   “Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

16) Section 2.3 is hereby deleted in its entirety and replaced with the following:

   2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master
Agreement and any and all Transactions may not be orally amended or modified.”

17) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

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

19) Section 3.3 is hereby amended by adding at the end thereof:

“The non-Claiming Party shall have until the end of the next Business Day to notify the Claiming Party that it objects to or disputes the existence of Force Majeure.”

20) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

21) Section 5.1(h)(ii) is amended by deleting the phrase “and such failure shall not be remedied within three (3) Business Days after written notice” in the third and fourth line thereof.

22) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

23) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

24) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

25) “(i) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice; or”

26) “(j) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within ninety (90) days.”

27) “(k) Either Party: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period; or (ii) disaffirms, disclaims or repudiates any Security Document.”
28) “(l) A Party or its Guarantor suffering or being the subject of a default, event of default, termination event, breach or other similar condition or event (howsoever expressed) that has not been remedied within the applicable grace periods under any other agreement or instrument (including, without limitation, commodity and financial derivative agreements or transactions) between a Party or one of its Affiliates and the other Party or one of its Affiliates, where the result of such event has been the termination and liquidation of transactions and the acceleration of amounts due thereunder.”

29) Section 5.2 is amended by:

(i) changing in line 3 “right (i) to” to “right to (i);”

(ii) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(iii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of a Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money for such Transaction), then for purposes of the calculation of the Termination Payment such Settlement Amount shall be deemed to be zero dollars ($0.00); provided, however, that if the Non-Defaulting Party has declared an Early Termination Date under either (i) Section 5.1 (d) or (ii) Section 5.1 (h) (either such event, a “Defaulting Party Credit Event”) the Settlement Amount shall not be deemed to be zero dollars ($0.00) and shall be equal to the amount originally calculated by the Non-Defaulting Party. If a Termination Payment would be due from the Non-Defaulting Party due to a Defaulting Party Credit Event, the Non-Defaulting Party may elect to pay the Termination Payment over the delivery term of the Terminated Transaction(s) by providing written notice to the Defaulting Party. The Non-Defaulting Party shall provide the Defaulting Party with a written explanation of the method for payment of the Termination Payment and the method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each Terminated Transaction in a manner reasonably designed to replicate as closely as possible the payment streams under each such Terminated Transaction.”
30) Section 5.3 is amended by inserting before the first line thereof the following new sentence:

“A Party shall determine the Settlement Amount for each Terminated Transaction as of the relevant Early Termination Date, or if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable.”

31) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then available to the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

32) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

33) In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days”.

Section 8.2(d) before the comma in line five, “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within three (3) Business Days of receipt of notice”.

34) In Section 8.2(d), remove “determined by Party A in a commercially reasonable manner” at the end of the first sentence and replace it with “equal to the amount of the Termination Payment”.

35) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment.”

36) ).

37) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of
Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act;

(xix) it continuously represents that it is not (i) an employee benefit plan (hereinafter an “ERISA Plan”), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), subject to Title I of ERISA or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended, or subject to any other statute, regulation, procedure or restriction that is materially similar to Section 406 of ERISA or Section 4975 of the Code (together with ERISA Plans, “Plans”), (ii) a person any of the assets of whom constitute assets of a Plan, or (iii) in connection with any Transaction under this Agreement, a person acting on behalf of a Plan, or using the assets of a Plan. It will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation.”

38) Section 10.2(viii) is hereby amended by adding at the end thereof:

“; it is understood that information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction, and the other Party is not acting with respect to any communication (written or oral) as a “municipal advisor,” as such term is defined in Section 975 of the U.S. Dodd-Frank Wall Street Reform & Consumer Protection Act; no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other Party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;”

39) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

40) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however”
and replacing them with

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”.

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

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

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

42) Section 10.7 is amended by deleting from the sixth line the phrase “at the close of business”.

43) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

44) In section 10.9 insert the words “certified and authenticated copies of, or originals at the option of the Party providing the records” after the word “examine” in line 2.

45) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

46) Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet to, or any annex to, this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors, or any such representatives of a Party’s Affiliates (all collectively referred to as “Representatives”) who have a need to know such information and who the Party is satisfied will keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request by a regulatory authority and in the event that any disclosure is requested or required by the regulatory authority or a government body by interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or applicable law, the Party subject to such request or requirement may disclose to the extent so requested or
required but shall promptly notify the other Party, prior to such disclosure, if such Party’s counsel determines that such notice is permitted by law, so that the other Party may seek an appropriate protective order or waive compliance with the provisions of this Section 10.11. Failing the entry of a protective order or the receipt of a waiver hereunder, that Party may disclose that portion of the Confidential Information as requested or required. In any event, a Party will not oppose action by the other to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. Each Party shall be liable for breach of any confidentiality obligation pursuant to this Master Agreement by such Representatives. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index. Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”
47) The following Mobile-Sierra clause shall be added as Section 10.12:

"10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the Mobile Sierra "public interest" application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al. No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.

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

48) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations
executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

49) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B a certificate, signed by an authorized signatory of Party A, certifying as to the completeness and correctness of attached copies of (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of a physical power Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

50) The following shall be added as a new Section 10.15:

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

51) The following new Section shall be added as Section 10.16:

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

52) The following new Section shall be added as Section 10.17:

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

(i) Market Disruption. If a Market Disruption Event occurs
during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below."

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

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

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

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

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

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

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or
announcement, either Party may notify the other Party of (i) that
correction and (ii) the amount (if any) that is payable as a result of that
correction. If, not later than thirty (30) days after publication or
announcement of that correction, a Party gives notice that an amount
is so payable, the Party that originally either received or retained such
amount will, not later than three (3) Business Days after the
effectiveness of that notice, pay, subject to any applicable conditions
precedent, to the other Party that amount, together with interest at the
Interest Rate for the period from and including the day on which
payment originally was (or was not) made to but excluding the day of
payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating
a Floating Price, all numbers shall be rounded to four (4) decimal
places. If the fifth (5th) decimal number is five (5) or greater, then the
fourth (4th) decimal number shall be increased by one (1), and if the
fifth (5th) decimal number is less than five (5), then the fourth (4th)
decimal number shall remain unchanged.”

53) The following new Section shall be added as Section 10.18:

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

54) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is
organized as a Joint Powers Authority in accordance with the Joint
Exercise of Powers Act of the State of California (Government Code
Section 6500, et seq.) and is a public entity separate from its constituent
members. Party B will solely be responsible for all debts, obligations and
liabilities accruing and arising out of this Agreement in accordance with
the Security Agreements. Party A will have no rights and will not make
any claims, take any actions or assert any remedies against any of Party
B’s constituent members, or the officers, directors, advisors, contractors,
consultants or employees of Party B or Party B’s constituent members, in
connection with this Agreement.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

55. The following shall be added at the end of Schedule P:

“If the Parties agree to a service level/product defined by reference to a different agreement (e.g., the MAPP Restated
Agreement, the WSPP Agreement, ERCOT Guides) for a particular Transaction, then, unless the Parties expressly state
and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product
shall be as defined by such other agreement, including if applicable, the regional reliability requirements and guidelines
as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable
to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions
of this Agreement remain applicable.”

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

57. The following shall be added at the end of Schedule P:

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

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

MORGAN STANLEY CAPITAL GROUP, INC.                      SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: ________________________________  By: ________________________________

Name: ________________________________  Name: ________________________________

Title: ________________________________  Title: ________________________________

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

COVER SHEET

This Master Power Purchase and Sale Agreement (Version 2.1, modified 4/25/00) ("Master Agreement") is made as of the following date: ________________ ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name: Powerex Corp.* ("Powerex" or "Party A")

* Powerex Corp., doing business in California as Powerex Energy Corp.

All Notices:
Street: Suite 1300 – 666 Burrard Street
City: Vancouver, B.C. Zip: V6C 2X8
Attn: Manager, Contracts
Phone: (604) 891-6090
Facsimile: (604) 891-5006
E-mail: powerex.legalservices@powerex.com
Duns: [To be inserted]
Federal Tax ID Number: [To be inserted]

Invoices:
Attn: Finance Department
Phone: (604) 891-5023
Facsimile: (604) 891-6011
Email: powerex.finance@powerex.com

Scheduling:
Attn: Daily Optimization & Scheduling
Phone: (604) 891-5007
Facsimile: (604) 891-5045
Email: presched@powerex.com

Payments:
Attn: Finance Department
Phone: (604) 891-5023
Facsimile: (604) 891-6011
E-mail: powerex.finance@powerex.com

Name: Silicon Valley Clean Energy Authority, a California joint powers authority ("Silicon Valley Clean Energy" or "Party B")

All Notices:
Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale, CA Zip: 94087
Attn: Tom Habashi
Phone: (408) 721-5301
Facsimile:
E-mail: tomh@svcleanenergy.org
Duns:
Federal Tax ID Number: [To be inserted]

Invoices:
Attn: Silicon Valley Clean Energy Authority Finance
Phone: (408) 721 - 5301
Facsimile:

Scheduling:
Attn:
Phone: (916) 221-4327
Address: 604 Sutter Street, Suite 250, Folsom, CA 95630
Email: eric@z.global.biz

Payments:
Attn: Silicon Valley Clean Energy Authority Finance
Phone: (408) 721 - 5301
Facsimile:
E-mail:

Wire Transfer: [To be inserted]

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
Beneficiary's Bank: [To be inserted]

Credit and Collections:
Attn: Credit Manager
Phone: (604) 891-6095
Facsimile: (604) 891-5025

Credit and Collections:
Attn: Silicon Valley Clean Energy Authority Finance
Phone: (408) 721-5301
Facsimile: 

With additional Notices of an Event of Default or
Potential Event of Default to:
Attn: Director, Risk Management
Phone: (604) 891-5041
Facsimile: (604) 891-5056

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

Party A Tariff: FERC Rate Schedule No. 1, effective April 7, 2014, Docket No. ER14-1281-000.
Party B Tariff: [Blank]
Dated [Blank]
Docket Number [Blank]

**Article Two**
Transaction Terms and Conditions

- [x] Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**
Remedies for Failure to Deliver or Receive

- [x] Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**
Events of Default; Remedies

- [x] Cross Default for Party A:
  - Party A: [Blank]
  - Cross Default Amount $ [Blank]
  - British Columbia Hydro and Power Authority
  - Cross Default Amount [Blank]
  - Cross Default for Party B:
  - Party B: Silicon Valley Clean Energy Authority
  - Cross Default Amount [Blank]
  - Other Entity: [Blank]
  - Cross Default Amount $ [Blank]

5.6 Closeout Setoff

- [ ] Option A (Applicable if no other selection is made.)
- [x] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: The sole Affiliate with respect to Party A shall be British Columbia Hydro and Power Authority.
- [ ] Option C (No Setoff)

**Article 8**
8.1 Party A Credit Protection:

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
(a) Financial Information:

☐ Option
☐ Option B Specify: 
☐ Option C Specify: (A) (1) The annual report containing audited consolidated financial statements for such fiscal year of Silicon Valley Clean Energy as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at www.svcleancenergy.com, and (2) quarterly unaudited financial statements for Silicon Valley Clean Energy as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The statements shall consist of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, statement of cash flows on a consolidating basis (as applicable), including the associated notes. Audited statements shall be audited by an independent certified public accountant. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B’s fiscal year ends June 30. (B) If and for so long as all undelivered (or partially undelivered) Transactions (in aggregate) hereunder are greater than 200,000 MWh or have a remaining term or tenor greater than six (6) months, Party B shall provide the following information to Party A at or before the times specified: (a) within 140 days after the end of each fiscal year: (1) by customer class (residential, commercial and industrial), the number and volume of customers that elected to opt out of Party B’s service, and (2) total retail customers by class (residential, commercial and industrial) by number and volume in the service territory; and (b) within 140 days after the end of each fiscal year, forecast retail sales and supply under contracts for the next five (5) fiscal years.

(b) Credit Assurances:

(c) Collateral Threshold:

If applicable, complete the following:

☐ Party B Collateral Threshold: Shall be provided, however, that Party B’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $0

Party B Rounding Amount: 

(d) Downgrade Event:

☐ Not Applicable
Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if the Credit Rating of [Party B or Party B’s Guarantor] falls below BBB- from S&P or below Baa3 from Moody’s, or if [Party B or Party B’s Guarantor] is not rated by either S&P or Moody’s.

☒ Other: Specify: It shall be a Downgrade Event for Party B if Party B’s equity or net position, as reflected in the fiscal year end financial statements provided pursuant to Section 8.1(a) above, falls below US$0.00 (zero dollars) for two fiscal reporting periods.

(e) Guarantor for Party B: NONE

Guarantee Amount: Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A

☒ Option B Specify: British Columbia Hydro and Power Authority. Any request for financial statements will be deemed to have been filed if such financial statements are available on the website for British Columbia Hydro and Power Authority.

☐ Option C Specify: ____________

(b) Credit Assurances:

☐ Not Applicable

☒ Applicable

(c) Collateral Threshold:

☐ Not Applicable

☒ Applicable

If applicable, complete the following:

☒ Party A Collateral Threshold:

provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A or Party A’s Guarantor has occurred.
and is continuing.

Party A Independent Amount: $0

Party A Rounding Amount: 

(d) Downgrade Event:

☐ Not Applicable
☒ Applicable

If applicable, complete the following:

☒ It shall be a Downgrade Event for Party A if the Credit Rating of Party A’s Guarantor falls below BBB- from S&P or below Baa3 from Moody’s, or if Party A’s Guarantor is not rated by any Ratings Agency.

☐ Other:
Specify: 

(e) Guarantor for Party A: British Columbia Hydro and Power Authority

Guarantee Amount: In accordance with Section 8.2(e).

<table>
<thead>
<tr>
<th>Article 10</th>
<th>Confidentiality</th>
<th>If not checked, inapplicable.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidentiality</td>
<td>☒ Confidentiality Applicable</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Schedule M</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Party A is a Governmental Entity or Public Power System</td>
<td></td>
</tr>
<tr>
<td>☒ Party B is a Governmental Entity or Public Power System</td>
<td></td>
</tr>
<tr>
<td>☒ Add Section 3.6. If not checked, inapplicable</td>
<td></td>
</tr>
<tr>
<td>☐ Add Section 8.6. If not checked, inapplicable</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other Changes</th>
<th>Cover Sheet: Schedule M</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Cover Sheet is revised by deleting the reference “Section 8.6” and replacing it with “Section 8.4”.</td>
</tr>
</tbody>
</table>

Article One: General Definitions

Section 1.1 is revised by adding the following sentence to the end of the definition:

“Notwithstanding the foregoing, (i) the sole Affiliate with respect to Party A shall be British Columbia Hydro and Power Authority, and (ii) the public entities that are designated as “Parties” under the Joint Powers Agreement (referred to herein as “members” of Party B) shall not constitute or otherwise be deemed an “Affiliate” of Party B for the purposes of this Master Agreement or any Confirmation.”

Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday, Easter Monday, a Canadian bank or Federal Reserve holiday or any statutory holiday in British Columbia”.

Section 1.12 is revised to read as follows:

“1.12 “Credit Rating” means, with respect to any entity, the rating then assigned by Moody’s, S&P or any other rating agency agreed by the Parties as set forth in the
Cover Sheet, to such entity’s senior unsecured long-term debt obligations (not supported by insurance provider 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 Moody’s or as an issuer or corporate credit rating by S&P or another rating by any other rating agency agreed by the Parties as set forth in the Cover Sheet. In the event that the Party or its Guarantor has multiple ratings, the lower rating shall prevail.”

The following defined term is added as Section 1.26A:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of March 31, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

Section 1.27 is revised by (A) deleting the word “transferable” in the first line and replacing it with “non-transferable”, (B) adding the phrase “a Canadian commercial bank” in the second line immediately after the words “U.S. commercial bank”, (C) deleting the words “credit rating” in third line and replacing it with “long term debt rating or deposit rating”, and (D) adding the phrase “and at least $10 billion in total assets” in the third line immediately after the word “Moody’s”.

The following defined term is added as Section 1.49A:

“1.49A “Ratings Agency” means S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.”

Section 1.50 is revised to read as follows:

“1.50 “Recording” has the meaning set forth in Section 2.5.”

Section 1.52 is deleted in its entirety as replaced with the following:

“1.52 “S&P” means S&P Global Market Intelligence, a division of S&P Global Inc., or its successor.”

Article Two: Transaction Terms and Conditions

Section 2.1 is revised by deleting the word “A” in the first line thereof and replacing it with the following: “Subject to Section 2.3, a”.

Section 2.2 is amended by deleting “(including any Confirmations accepted in accordance with Section 2.3)” from the second sentence and is further revised by adding the following to the end of the section:

“Party A and Party B agree that from and after the Effective Date, all new transactions with respect to the purchase and sale of any Product shall be made or deemed to be made pursuant to this Master Agreement (unless otherwise specifically agreed in writing).”

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

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

7
Section 2.4 is amended by deleting the words “either orally or” in the seventh line thereof.

Section 2.5 is revised by deleting the last two sentences thereof in their entirety.

**Article Three: Obligations and Deliveries**

Section 3.2 is revised to add the following to the end of the section: “From time to time the Parties may agree to bookout Transactions until further notice. Bookouts are undertaken as a scheduling convenience and do not modify the terms of any Transaction.”

**Article Four: Remedies for Failure to Deliver/Receive**

Each of Section 4.1 and Section 4.2 are revised so that the words “five (5) Business Days” in the fifth line of each section are deleted and replaced with “two (2) Business Days”.

**Article Five: Events of Default; Remedies**

Section 5.1(a) is revised to delete “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 5.1(g) is revised (A) by adding “(after giving effect to any applicable notice requirement or grace period)” in the second line after the word “continuation”, (B) by adding “required to be made under one or more agreements for such Party or any other party specified in the Cover Sheet,” in the eleventh line before the word “individually”, and (C) by adding the following phrase at the end of the section “provided, an Event of Default shall not occur under this Section 5.1(g) if, as demonstrated to the reasonable satisfaction of the other Party, the Event of Default or the failure to pay is the result of a failure to pay caused by an error or omission of an administrative or operational nature, funds were available to such Party to enable it to make the relevant payment when due, and such relevant payment is made within three (3) Business Days following receipt of written notice from the party to whom the payment is owed.”.

Section 5.1(h)(ii) is revised to add the phrase “or any other agreement between Party A or its Affiliate and Party B or its Affiliates,” after the word “Agreement”.

Section 5.1(h)(v) is revised by adding the phrase “made in connection with this Agreement” after “any guaranty”.

The “;” at the end of subparagraph (v) of Section 5.1(h) is replaced with “;” and the following two paragraphs are added to the end of Section 5.1:

“(i) a Letter of Credit Failure that is not cured within five (5) Business Days after the occurrence thereof; or

(j) a default, event of default, termination event, breach or any other similar event (howsoever expressed) that has not been remedied within the applicable grace period under any other agreement or instrument (including without limitation commodity or financial derivative agreements or transactions) between a Party or its Affiliate and the other Party or its Affiliate, that results in the other party being entitled under the terms of such other agreement to terminate and liquidate transactions and arrive at a net settlement payment thereunder by invoking a process similar in substance to the process described in Sections 5.2, 5.3 and 5.6 regardless of the defined terms used to describe the same.”

Section 5.2 is revised by reversing the placement of “(i)” and “to”.

Clause (b) of Section 5.3 is revised so that the phrase “plus, at the option of the Non-
Defaulting Party, any cash then available to the Defaulting Party pursuant to Article Eight,” is inserted after the first occurrence of the words “Non-Defaulting Party”.

Section 5.3 is amended by adding the following sentence at the end of the section:

“Notwithstanding the immediately preceding sentence, no Termination Payment shall be due or payable to the Defaulting Party.”

The following is added as a new Section 5.8:

“5.8 Letter of Credit Failure. For the purposes of this Article Five, “Letter of Credit Failure” shall mean, with respect to a Party that has provided a Letter of Credit as Performance Assurance:

(a) a failure to renew or substitute a Letter of Credit by no later than fifteen Business Days prior to expiry thereof;

(b) the issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P or at least “A3” by Moody’s and fails to maintain at least $10 billion in total assets;

(c) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit if such failure continues after the lapse of any applicable grace period;

(d) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(e) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement or any outstanding Transaction; or

(f) any event analogous to an event specified in Subsection 5.1(d) or (f) of this Agreement occurs with respect to the issuer of such Letter of Credit.

However, no Letter of Credit Failure will occur with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.”

Article Six: Payment and Netting

Section 6.3 is amended by changing “twelve (12) months” to “twenty-four (24) months” in lines 3, 16 and 18.

Section 6.4 is revised by adding the following sentence to the end of the section:

“In the event the Parties are transacting under additional agreements, all transactions completed in the same month shall be netted against each other using the procedure described above.”

Article Eight: Credit and Collateral Requirements

Section 8.1(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

Section 8.1(b) is revised to delete in lines 5 and 7 “three (3) Business Days” and replace it
with “five (5) Business Days”.

Section 8.1(d) is amended by (i) changing “three (3) Business Days” to “one (1) Business Day”, and (ii) adding, before the comma in line five, “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within one (1) Business Day of receipt of notice”.

Section 8.2(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

Section 8.2(b) is revised to delete in lines 5 and 7 “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 8.2(c) is revised by adding the following paragraph after the first paragraph:

“Party A may at any time and from time to time (including at the time of a request by Party B for Performance Assurance) give notice to Party B of its intent to increase the amount of the guarantee provided by Party A’s Guarantor up to the amount set forth in the table on the Cover Sheet opposite the lowest Credit Rating for Party A’s Guarantor. No such increase shall become effective until Party A shall have provided Party B with a new guaranty or an amended guaranty (in form and substance acceptable to Party B). If the operation of the foregoing results in the sum of Party A Performance Assurance and Party A’s Collateral Threshold being in excess of its Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount) Party A shall be deemed to have requested that the Party A Performance Assurance be reduced accordingly.”

Section 8.2(d) is amended by (i) changing “three (3) Business Days” to “one (1) Business Day”, and (ii) adding, before the comma in line five, “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within one (1) Business Day of receipt of notice”.

Section 8.2(e) is deleted in its entirety and replaced with the following:

“(e) If specified on the Cover Sheet, Party A shall, at the request of Party B, deliver to Party B a guarantee in a form and an amount agreed to by both Parties and Party A’s Guarantor, which shall be delivered to Party B on or before ten (10) Business Days after the date on which the Parties and Party A’s Guarantor have agreed to the form and amount of the guarantee. In the event the Parties (each acting reasonably) and Party A’s Guarantor cannot agree to the form and amount for the guarantee to be delivered by Party A within ten (10) Business Days of Party B’s request, Party A may deliver Performance Assurance to Party B in substitution for the guarantee. For greater certainty, it shall not be an Event of Default if Party A does not deliver a guarantee to Party B absent a request by Party B and the agreement of the Parties and Party A’s Guarantor as to the form and amount of such guarantee.”

Article Ten: Miscellaneous

Section 10.2(iii) is revised by inserting the text “(including, with respect to Party B, the Joint Powers Agreement)” immediately after the words “governing documents”.

Section 10.11 is revised to read as follows:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose (i)
the terms or conditions of a Transaction or any other information exchanged relating to a Transaction or potential Transaction, or (ii) the completed Cover Sheet to this Master Agreement, to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding, or (b) to the extent necessary to provide commercial terms of a Transaction, except the details pertaining to Seller or Buyer or either Party’s name, to a third party for the sole purpose of calculating a published index; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. This Section 10.11 is in addition to, and not in substitution for, any other written assurances of non-disclosure between and executed by the Parties.”

The following is added as Section 10.12:

“10.12 Arbitration.

(a) Any claim, counterclaim, demand, cause of action, dispute or controversy arising out of or relating to this Agreement, or in respect of any legal relationship associated therewith or derived there from or relating to the subject matter of this Agreement, whether contractual in nature or not, shall be referred to and finally resolved by arbitration administered pursuant to the International Arbitration Rules of the American Arbitration Association (or such other rules of arbitration as the Parties may agree). The number of arbitrators shall be three, and each Party shall choose one arbitrator and the two arbitrators shall choose the third arbitrator, who shall serve as chair. The place of arbitration shall be Portland, Oregon. The language of the arbitration shall be English. It is agreed that the arbitrators shall have no jurisdiction or authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under any applicable law, and each of the Parties hereby waives its rights, if any, to recover any such damages. To the fullest extent permitted by law, the Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrators’ award, provided that each of the Parties shall be entitled to disclose such matters to its own officers, directors and employees, its professional advisors and other representatives as necessary for the purposes of conducting the arbitration, and may make such disclosures in the course of legal proceedings as may be required to pursue any legal right arising out of or in connection with the arbitration.

(b) If any applicable law or statute authorizes any form of court proceeding in any of the courts of the United States that in any way arises out of or is related to an arbitration conducted pursuant to this Agreement (“Related Proceedings”), then, to the extent that any such matter is in whole or in part eligible for resolution by a United States District Court, whether or not the dispute may in whole or in part also be eligible for resolution in a state court, each party irrevocably:

(i) submits to the exclusive jurisdiction of the United States District Court located in the City of Portland, Oregon for the purposes of such Related Proceedings; and
(ii) waives any objection which it may have at any time to the laying of venue of any Related Proceedings brought in any such court, waives any claim that such Related Proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such Related Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either Party from bringing a proceeding in any jurisdiction to enforce an arbitration award or any judgment enforcing an arbitration award, nor will the bringing of such proceedings in any one or more jurisdictions preclude the bringing of enforcement proceedings in any other jurisdiction. In connection with any court proceedings, each Party waives its respective right to any jury trial.”

The following is added as Section 10.13:

“10.13 Waiver. FERC Standard of Review.

(A) Absent the agreement of all parties to the proposed change, the standard of review for changes to any provision of this Agreement (including all Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties herein, whether proposed by a party, a non-party or FERC acting sua sponte, shall solely 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

(B) The parties, for themselves and their successors and assigns, (y) agree that “public interest” standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with this Agreement and (z) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard of review, provided that this standard of review and the other provisions of this Section 10.13 shall only apply to proceedings before the FERC or appeals thereof.

(C) In addition, and notwithstanding the foregoing clauses (A) and (B), to the fullest extent permitted by applicable law, each party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any provision of this Agreement (including any applicable Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties, it being the express intent of the parties that, to the fullest extent permitted by applicable law, neither party shall unilaterally seek to obtain from FERC any relief changing the rate(s) and/or other material economic terms and conditions of their agreement(s), as set forth in this Agreement and in any Transactions or Confirmations, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined
that applicable law precludes the parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 10.13 shall not apply, provided that, consistent with this Section 10.13 neither party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in clauses (A) and (B) above.

The following is added as Section 10.14:

“10.14  Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:

(i) The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.

(ii) If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.

(iii) If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.

(iv) If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties ("Specified Dealers"), without regard to the quotations with the highest and lowest values, subject to the following qualifications:

A. If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest
values.

B. If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.

C. If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.

(v) Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

(b) Definitions. For the purposes of this Section 10.14, the following terms shall have the following meanings:

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

(ii) “Exchange” means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

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

(iv) “Market Disruption Event” means, with respect to any Price Source, any of the following events:

A. the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;

B. the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;

C. the temporary or permanent discontinuance or unavailability of the Price Source;

D. the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or

E. a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

(v) “Price Source” means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO,
containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

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

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

(viii) “Trading Day” means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(c) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(d) Rounding. When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

The following is added as Section 10.15:

“10.15 Counterparts / Electronic Delivery.

This Agreement may be executed in counterparts each of which is an original, and all of which shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement and any Confirmation by facsimile or electronic mail transmission (in portable document format (PDF)) shall be as effective as delivery of a manually executed signature page.”

The following is added as Section 10.16:

“10.16 Joint Powers Authority.

Party A hereby acknowledges and agrees that Party B is organized as a Joint
Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party B’s members in connection with this Agreement.

Schedule M: Governmental Entity or Public Power System

Section A of Schedule M is hereby amended by deleting the defined term “Act” and replacing it with the following:

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

Section D of Schedule M is hereby amended by deleting paragraph (ii) of Section 3.4 and replacing it with the following:

“(ii) a certificate, signed by an officer of the Governmental Entity or Public Power System and in form and substance reasonably satisfactory to the Other Party, certifying as to certain factual matters.”

Section E of Schedule M is hereby amended by inserting the text “Governmental Entity or” immediately after the word “cover” in the second sentence of Section 3.6.

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

“G. The Parties agree to add the following sentence at the end of Section 10.6 – Governing Law:


Schedule P: Products and Related Definitions

The following definition and provision are added to Schedule P:

1. “CAISO Energy” means with respect to any Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator (“CAISO”) (as amended from time to time, the “Tariff”) for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” (as defined in the Tariff). A CAISO “Schedule Adjustment” (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the Tariff).

2. Other Products and Service Levels: In addition to the Products set out in Schedule P, the Parties may agree to use a product or service level defined by a different agreement (i.e., the Tariff, the WSPP Agreement, etc.) for a particular Transaction under this Master Agreement. If so, then the Transaction shall be subject to all the terms of this Master Agreement, except that (1) the product or service level definition, (2) force majeure, uncontrollable force definitions or other excuses for performance, (3) applicable regional reliability requirements and guidelines, and (4) other terms and conditions as mutually agreed in writing, shall have the meaning given to them in the different agreement or in the
applicable Confirmation.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Powerex Corp.*

By: ________________________________
Name: ________________________________
Title: ________________________________

Silicon Valley Clean Energy Authority, a California joint powers authority

By: ________________________________
Name: ________________________________
Title: ________________________________

*Powerex Corp., doing business in California as Powerex Energy Corp.

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

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: June 24, 2016 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

TBD Shell Energy North America (US), L.P., a Delaware limited partnership ("Shell Energy" or "Party B")

Silicon Valley Clean Energy Authority, a California joint powers authority ("Silicon Valley Clean Energy" or "Party B")

All Notices:
Attn: Contracts North America
Address: Street: 1000 Main Street, Level 12

Phone: 877-504-2491; Fax: 713-767-5414
E-mail: 
Duns: 
Federal Tax ID Number: 724344341

All Notices:
Attn: Tom Habashi
Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale, CA Zip: 94087

Phone: (408) 721-5301
E-mail: tomh@svcleanenergy.org
Duns: 
Federal Tax ID Number: 

Invoices:
Attn: Power Accounting
Address:
Phone: 713-767-5500; Fax: 713-767-5414
Facsimile:
E-Mail: 

Invoices:
Attn: Silicon Valley Clean Energy Authority Finance
Address: 604 Sutter Street, Suite 250,
Folsom, CA 95630

Phone: (408) 721-5301
Facsimile:

Scheduling:
Attn: 24 Hour Operations (Houston, Texas)
Address:
Phone: 1-800-267-2562; Fax: 713-767-5415

Attn: 24 Hour Operations (San Diego, California)
Address: 1-858-320-1500; Fax: 858-320-1550

Scheduling:
Phone: (916) 221-4327
Address: 604 Sutter Street, Suite 250,
Folsom, CA 95630
Email: eric@zglobal.biz

Confirmations:
Attn: Power Confirmations
Address:
Phone: 877-504-2491; Fax: 713-767-5414
Facsimile:
E-mail: 

Option Exercise Line: (Houston, Texas)
Phone: 713-767-5398

1
Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association

29403293v3
Payments:
Attn: Power Accounting
Address: 
Phone: 713-767-5500; Fax: 713-767-5414
E-Mail: 

Wire Transfer: 

Other Details:

Credit and Collections:
Attn: Director – Credit Risk Management
Address: 713-767-5329; Fax: 713-230-7925
Phone: 
Facsimile: 
E-Mail: www.margindesk@shell.com

With additional Notices of an Event of Default to:
Attn: General Counsel
Address: 
Phone: 713-767-5500; Fax: 713-230-2900
Facsimile: 

Payments:
Attn: Silicon Valley Clean Energy Authority Finance
Phone: (408) 721-5301
Facsimile: 
E-mail 

Wire Transfer:

Credit and Collections:
Attn: Silicon Valley Clean Energy Authority Finance
Phone: (408) 721-5301
Facsimile: 

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: 
Phone: 
Facsimile: 

Version 2.1 (modified 4/25/06)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff: FERC Electric Tariff Dated: Docket Number:

Party B Tariff N/A

---

**Article Two**

Transaction Terms and Conditions  
[x] Optional provision in Section 2.4. If not checked, inapplicable.

---

**Article Four**

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

---

**Article Five**

Events of Default; Remedies  
[x] Cross Default for Party A:  
[x] Party A: Shell Energy North America (US), L.P.  
Cross Default Amount $_________  
[] Other Entity:  
Cross Default Amount

[x] Cross Default for Party B:  
[x] Party B: Silicon Valley Clean Energy Authority  
Cross Default Amount $_________  
[] Other Entity:  
Cross Default Amount $_________

---

5.6 Closeout Setoff  

[x] Option A (Applicable if no other selection is made.)  
[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:  
[] Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements  

8.1 Party A Credit Protection:  
(a) Financial Information:  

[x] Option A  
[] Option B Specify: ________________  
Option C Specify: ________________  

(1) The annual report containing consolidated financial statements for such fiscal year of Silicon Valley Clean Energy as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at www.svcleanenergy.org, and (2) quarterly unaudited financial statements for Silicon Valley Clean Energy as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In
all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

(c) Collateral Threshold:

If applicable, complete the following:

Party B Collateral Threshold: $ ___________; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $ ___________

Party B Rounding Amount: $ ___________

(d) Downgrade Event:

[x] Not Applicable
[ ] Applicable

If applicable, complete the following:

[ ] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _________ from S&P or _________ from Moody's or if Party B is not rated by either S&P or Moody's.

[ ] Other:
Specify: __________________________________________

(e) Guarantor for Party B: N/A

Guarantee Amount: __________________________________________

8.2 Party B Credit Protection:

(a) Financial Information:

[X] Option A
[ ] Option B Specify: __________________________

4

Version 2.1 (modified 4/25/00)
©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association
Option C Specify:

The annual report containing audited consolidated financial statements for such fiscal year of Party A [Party A's Guarantor] as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A [Party A's Guarantor] and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A [Party A's Guarantor], and such request will be deemed to have been filled if such financial statements are available at _____________. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

- [ ] Not Applicable
- [X] Applicable

(c) Collateral Threshold:

- [ ] Not Applicable
- [X] Applicable

If applicable, complete the following:

Party A Collateral Threshold: ____________ provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: As set forth in the Applicable Confirmation.

Party A Rounding Amount: $ ____________

(d) Downgrade Event:

- [ ] Not Applicable
- [X] Applicable

If applicable, complete the following:

[X] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P or Baa3 from Moody’s or if Party A is not rated by either S&P or Moody’s.

[ ] Other:

Specify: It shall be a Downgrade Event for Party A if Party A’s Guarantor’s Credit Rating falls below __ from S&P or __ from Moody’s or if Party A is not rated by either S&P or Moody’s.
(e) Guarantor for Party A:

Guarantee Amount:

---

**Article 10**

Confidentiality

- [x] Confidentiality Applicable
  - If not checked, inapplicable.

**Schedule M**

- [ ] Party A is a Governmental Entity or Public Power System
- [x] Party B is a Governmental Entity or Public Power System
- [x] Add Section 3.6. If not checked, inapplicable
- [x] Add Section 8.4. If not checked, inapplicable. Collateral description as follows: See Security Documents

**Other Changes**

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

   “Notwithstanding the foregoing, the Parties hereby agree and acknowledge that (i) with respect to Shell Energy, “Affiliates” shall mean Shell Energy and its subsidiaries for purposes of Section 5.6 and Section 10.2(vi) and (ii) the public entities designated as members or participants under the Joint Powers Agreement creating Party B, shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.12 is amended by deleting the word “issues” and replacing it with “issuer”.

4) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

5) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.50 (Recording) Delete the reference to “Section 2.4” and replace it with “Section 2.5”.

9) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

10) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC”
and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

11) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0); provided, however that in no event shall Shell Energy be prevented from recovering the costs set forth in this Section”

12) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “as determined in accordance with Section 5.2.”

13) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

14) The following definition is added to Article One in alphabetical order:

“Collateral Agent” means [_____________].

15) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

16) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

17) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”
18) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

19) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.”

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

21) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

22) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared.” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

23) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

24) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

“(i) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice; or”

“(j) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within ninety (90) days.”

“(k) Either Party or the Collateral Agent: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below) and such Event of Default or default continues after giving effect to any applicable notice requirement or
cure or grace period; or (ii) disaffirms, disclaims or repudiates any

25) Section 5.2 is amended by:

(i) changing in line 3 “right (i) to” to “right to (i)”; 

(ii) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and 

(iii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of a Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money for such Transaction), then for purposes of the calculation of the Termination Payment such Settlement Amount shall be deemed to be zero dollars ($0.00).”

26) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a replacement Transaction in order to determine the Settlement Amount.

27) In Section 5.7, delete “(a)” and “or (b) a Potential Event of Default” from the second line and (ii) deleting from line 5 “ten (10)” and replacing it with “twenty (20).”

28) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

29) Section 7.1 shall be amended by:

(i) deleting in the fifteenth line the words “UNLESS EXPRESSLY HEREIN PROVIDED,”;

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

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

30) In Sections 8.1(b) and 8.2(b), change “three (3) Business Days” to “five (5) Business Days”.

31) In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days”.

Section 8.2(d). Before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing.”.

32) A new Section 8.5. “UCC Waiver,” is added as follows:

“Section 8.5: Section 8 and Schedule M of the Agreement and the Security Documents set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and in Schedule M and in the Security Documents, neither Party:

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

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

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

33) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

34) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other
Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

35) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

36) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, as of the Effective Date, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date”

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

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

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

38) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

39) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

40) In section 10.9 insert the words “copies of” after the word “examine” in line 2 and (ii) changing twelve (12) months to twenty-four (24) months in line 9.

41) Section 10.10 shall be amended by adding the following after the last
sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

42) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the
Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

43) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the Mobile Sierra “public interest” standard of review set forth in Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al. No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.”

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

44) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the
obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4(i) and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

45) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B a certificate, dated as of the Effective Date and signed by an authorized signatory of Party A, certifying as to the completeness and correctness of attached copies of (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

46) The following shall be added as a new Section 10.15:

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

47) The following new Section shall be added as Section 10.16:

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

48) The following new Section shall be added as Section 10.17:
"Index Transactions." If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) **Market Disruption.** If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below."

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

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

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

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

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

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

(ii) **Corrections to Published Prices.** For purposes of
determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

49) The following new Section shall be added as Section 10.18:

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

50) The following new Section shall be added as Section 10.19

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.

51): The following changes shall be made to Schedule M:

The “Governmental Entity or Public Power System” definition shall be deleted and all references thereto in the Agreement shall be replaced with “Party B”

“Act” shall mean “the Joint Exercise of Powers Act of the State of
California (Government Code Section 6500, et seq.).

The following definitions will be added to Schedule M:

“Collateral Agent” has the meaning in the Security Documents.

“Depositary Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement, among the Depositary Bank, Party B and the Collateral Agent.

The “Special Fund” definition shall be deleted in its entirety and replaced with:

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’s obligations under this Master Agreement for the entire Delivery Period.

The text of Section 10.2, shall be deleted in its entirety and replaced with:

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by Party B will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Party B or any members of Party B otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of
indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

Section 3.5 shall be amended by deleting the text in the parenthesis in lines 3 and 4 and replacing with the following: “provided that such court is located within a venue permitted under the Agreement”. In addition, add the following to the end of Section 3.5:

“provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).”

Section 3.6, the text shall be deleted in its entirety and replaced with:

“Section 3.6 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.”

Section 8.4, the text shall be deleted in its entirety and replaced with:

Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein.

Section 10.6, shall be amended by adding “California” after “of” and before “Shall”

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

TBC

By: ________________________________
Name: ______________________________
Title: ______________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: ________________________________
Name: ______________________________
Title: ______________________________

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and
development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.
Staff Report – Item 7

To: Silicon Valley Clean Energy Authority Board of Directors
From: Tom Habashi, CEO

Item 7: Approve Agreement for ZGlobal Inc. of Power Supply Scheduling Coordination Services

Date: 11/9/2016

RECOMMENDATION

This recommends that SVCE Board authorize the Chief Executive Officer to enter into a 5 year agreement with ZGlobal Inc. (ZGlobal) for power supply scheduling coordination services (SC).

BACKGROUND

On August 15, 2016, SVCE issued an RFP for power supply and scheduling coordination services. On September 19, 2016 we received twelve proposals, four of which were from independent providers of SC services. We also received offers from power suppliers that were willing to provide SC services free of charge provided that they receive the bulk of the power supply contract.

SC services involve interfacing with the California Independent System Operator to exchange information regarding projected loads, generation supply schedules, and grid conditions to help the CAISO maintain system balance and grid reliability. Scheduling coordinators must maintain a 24 X 7 operation and specialized information systems in order to deal with grid operations that may arise at any time. SC services also involve processing financial settlements with the CAISO for load and generation schedules and can include short term energy trading, risk management, and other services.

ANALYSIS & DISCUSSION

SVCE’s power supply requirement is likely to be the largest of all the CCAs operating in California today. Consequently, it’s important that we diversify not only the source of electricity, but also the suppliers/marketers that will serve our territory. This supplier diversification objective is best served by contracting with an independent scheduling coordinator as opposed to utilizing SC services that are being provided free of charge from some of the larger marketers.

Four proposals were received from independent scheduling coordinators, the best of which was received from ZGlobal. Advantages of the ZGlobal proposal include independence, strong market expertise, and low cost. The following lists services that ZGlobal will provide to SVCE:

- Financial Settlement Services
- Load Scheduling Services
- Load Forecasting Services
- Portfolio Management Services
- Risk Management Services
The average cost of providing the SC services ($0.05 per MWh) are minimal in comparison to the average cost of power supply ($45 per MWh), while the service itself is essential to ensure proper accounting of supply and renewable portfolio credits. The following table shows the cost of SC services over the next 5 years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$94,800</td>
</tr>
<tr>
<td>2018</td>
<td>$193,392</td>
</tr>
<tr>
<td>2019</td>
<td>$197,260</td>
</tr>
<tr>
<td>2020</td>
<td>$201,205</td>
</tr>
<tr>
<td>2021</td>
<td>$205,229</td>
</tr>
</tbody>
</table>

Scheduling coordination service is essential to the delivery of power that SVCE will acquire on behalf of its residential and commercial customers. The recommended contract with ZGlobal will enable SVCEA to obtain cost-effective SC services along with other value added services such as development of risk management policies and procedures. Utilizing an SC service provider like ZGlobal, that is independent of power marketing, will facilitate diversification of power suppliers.

**ATTACHMENTS**
1. Agreement for ZGlobal Inc. of Power Supply Scheduling Coordination Services
SCHEDULING SERVICES AGREEMENT

This Scheduling Services Agreement ("Agreement"), dated as of October 21, 2016 ("Effective Date"), is entered into between ZGlobal Inc. ("ZGlobal") and Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCEA" or "Client"). ZGlobal and Client are referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Client desires to have ZGlobal perform the Services (as defined below);

WHEREAS, ZGlobal is in the business of providing energy scheduling/settlement and related services as an agent, including the Services; and

WHEREAS, except as otherwise defined in the body of this Agreement, terms and expressions used in this Agreement shall have the meanings contained in Exhibit A.

NOW THEREFORE, in consideration of the promises, covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ZGlobal and Client, intending to be legally bound, hereby agree as follows:

ARTICLE 1
TERM AND TERMINATION

1.1 Term. The "Primary Term" of this Agreement shall be five (5) years, beginning on the Commencement Date, unless terminated earlier as provided in this Agreement. At the conclusion of the Primary Term, this Agreement shall automatically continue for successive one (1) year terms (each such term an "Additional Term"), unless either Party has given the other Party at least ninety (90) days' written notice prior to the end of the Primary Term or the Additional Term that it does not wish to renew the Agreement or unless terminated earlier as provided in this Agreement (the period during which the Agreement remains in effect, the "Term").

1.2 Termination for Convenience. During the Term, either Party may terminate this Agreement at any time for any reason or no reason upon one hundred eighty (180) days’ prior written notice for ZGlobal and ninety (90) days’ prior written notice for Client. For the avoidance of doubt, Client may request the cancellation of a Service on prior written notice to ZGlobal without terminating the Agreement.

1.3 Termination for Cause. During the Term, if one of the following events (each, an "Event of Default") occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") shall have the right to terminate this Agreement upon delivery of written notice to the Defaulting Party:

(a) A Party fails to make when due any undisputed payment due under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Party failing to make payment;
(b) A Party breaches a material covenant or agreement in this Agreement (other than a default in a payment obligation), if such breach is not remedied within ten (10) Business Days after written notice is given to the Party in breach of its covenants or agreements under this Agreement;

(c) A Party makes an assignment or any general arrangement for the benefit of creditors; or files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it; or otherwise becomes bankrupt or insolvent (however evidenced); or becomes unable to pay its debts as they fall due;

(d) ZGlobal fails to maintain Performance Assurance in accordance with Article VII, and does not remedy such breach within three (3) Business Days after written notice from Client; or

(e) One or more of a Party’s representations or warranties set forth in Section 5.1 or 5.2 (as applicable) are no longer true or correct, and such representation or warranty is not corrected within thirty (30) days after written notice is given to the Party whose representation or warranty is no longer true or correct.

1.4 Effect of Termination. Notwithstanding anything else set forth herein, the terms and conditions of this Agreement shall remain in effect until the Parties have fulfilled all outstanding obligations, including payment in full of amounts due and transfer of information to Client or Client’s designee, and the termination of this Agreement shall not relieve either Party of (i) any unfulfilled obligation or undischarged liability of such Party existing as of the termination date, including without limitation the transition of the Services to Client or its designee (ii) the consequences of any breach or default under this Agreement to the extent not excused by this Agreement, or (iii) any obligations or liabilities arising from provisions of this Agreement that either expressly or by their nature survive the termination of this Agreement. Within 90 days after the termination of this Agreement, any amounts due from either Party shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds made. No termination by ZGlobal shall be effective until the later of (x) the termination date specified in ZGlobal’s written notice of termination or (y) the date upon which ZGlobal has transitioned the Services to Client or its designee in accordance with Section 2.3; provided that such transition period shall not exceed forty-five (45) days. The Client’s cancellation of a Service shall not act as a termination of the Agreement.

1.5 Exclusive Remedy. For the avoidance of doubt, except for and subject to its right to indemnification under Article 8, if Client is not satisfied with ZGlobal’s performance of Services hereunder, Client’s sole and exclusive remedy shall be to terminate this Agreement pursuant to Section 1.2 or Section 1.3 above, as applicable.

1.6 Cooperation. In connection with the termination of this Agreement, ZGlobal shall take such actions as Client may reasonably request and ZGlobal agrees to work cooperatively with Client to facilitate the transition of Services from ZGlobal to Client or Client’s designee.
ARTICLE 2
DESCRIPTION OF CLIENT ASSETS; SERVICES

2.1 **Description of Client Assets.** As requested by Client, ZGlobal will provide Services for the loads and generation assets set forth in Exhibit B attached hereto ("Client Assets"), as amended in writing by the Parties from time to time.

2.2 **Services.** ZGlobal, as agent for Client pursuant to this Agreement, shall provide the following Services for the Client Assets, commencing on the date identified for each Service (Client to check all that apply, and provide a start date for any checked Service):

<table>
<thead>
<tr>
<th>Check All that Apply</th>
<th>Services Description</th>
<th>Start Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>Generation Scheduling Services</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scheduling and Outage Coordination (Exhibit C)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Financial Settlement Services (Exhibit D)</td>
<td>4/1/2017</td>
</tr>
<tr>
<td>X</td>
<td>Load Scheduling Services</td>
<td>4/1/2017</td>
</tr>
<tr>
<td></td>
<td>Scheduling and Outage Coordination (Exhibit C)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Load Forecasting Services</td>
<td>4/1/2017</td>
</tr>
<tr>
<td></td>
<td>Forecasting Services (Exhibit E)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Portfolio Management Services</td>
<td>4/1/2017</td>
</tr>
<tr>
<td></td>
<td>Portfolio Management Services (Exhibit G)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Risk Management Services</td>
<td>1/1/2017</td>
</tr>
<tr>
<td></td>
<td>Risk Management Program Development and Support Services (Exhibit H)</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Information Resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Information Resources (Exhibit K)</td>
<td></td>
</tr>
</tbody>
</table>

Each Exhibit checked above is attached hereto and incorporated herein by reference, and collectively comprise the "Services" to be performed by ZGlobal under this Agreement.

2.3 **Continuity of Service.** In the event Client cancels a Service, this Agreement terminates, or ZGlobal fails, ceases or is unable to provide the Services under this Agreement for any reason, then, to the extent necessary, the Parties shall take all steps necessary to terminate the designation of ZGlobal as agent for Client for the Service or Services, and ZGlobal shall take such actions as Client may reasonably request in order to transition responsibility for the performance of the Service or Services to Client or a replacement provider. Additionally, as part of the transfer of a Service or Services under this Section 2.3, ZGlobal agrees to assign to Client, at Client's request, any underlying agreements with third-party software or service providers necessary for
continued performance of the Service or Services, including the Information Resources (as defined below).

2.4 **Information Access.** ZGlobal shall provide Client and Client’s designated representatives and consultants with access to the software, databases, data, and information portal(s) identified in Exhibit K (collectively, the “Information Resources”).

2.5 **Designation of ZGlobal as Agent.** Client hereby designates ZGlobal as its agent and representative in connection with and to the extent reasonably required to perform the Services. Client agrees to promptly:

(a) Notify CAISO and any other relevant entities of this arrangement; and

(b) Provide ZGlobal with all necessary and appropriate information and data for ZGlobal to begin performing the Services.

2.6 **Standard of Performance.** ZGlobal shall perform the Services consistent with Good Industry Practice and Applicable Laws, and in accordance with written direction from Client (if any).

**ARTICLE 3**

**COMPENSATION; BILLING AND PAYMENT**

3.1 **Compensation.** As consideration for the Services performed by ZGlobal hereunder, Client shall pay ZGlobal all undisputed applicable Services Fees in accordance with Exhibit I. In the event Client, in good faith, disputes ZGlobal’s computation of amounts due and owing, Client will provide ZGlobal with written documentation explaining the disputed amount and describing in detail the factual and legal basis of the dispute. Client must pay all charges which are not in dispute in accordance with the payment terms outlined above. Client will cooperate with ZGlobal to resolve any payment dispute expeditiously.

3.2 **Billing Statements.** ZGlobal shall deliver to Client on or before the tenth (10th) Business Day of the month following that month for which Services were provided a monthly Scheduling Coordinator Services statement (each a “Statement”) setting forth the Services Fees applicable to the Services performed during that period. Payments shall be made to ZGlobal on or before thirtieth (30th) Business Day after receipt of each Statement.

3.3 **Failure to Pay.** Client’s failure to make timely payments hereunder shall be considered a breach. In the event such breach is not cured within fifteen (15) days following written notice by ZGlobal, then Client shall be in default and ZGlobal may:

(a) Apply any revenues or payments received by ZGlobal for the benefit of Client from Balancing Authorities, Transmission Owners/Operators the CAISO, or any other third party towards the outstanding amount owed to ZGlobal;

(b) Apply any monies from the Services Payment Security posted by Client pursuant to Exhibit C towards the outstanding amount owed to ZGlobal; and/or
(c) Terminate this Agreement and all Services provided for herein pursuant to Section 1.3(a) above.

3.4 Late Payments. Any payment that is not received by ZGlobal on or before the date required shall incur a monthly late fee, which shall be the total undisputed outstanding balance due multiplied by the Interest Rate ("Late Fee").

3.5 Audit Rights. Client (or its designee) shall have the right, with prior written notice, at its sole expense and during normal working hours, to examine the records of ZGlobal to the extent reasonably necessary to verify the accuracy of any Statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any Statement or Late Fee, the necessary adjustments in such Statement or Late Fee and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate.

3.6 Independent Contractor. ZGlobal shall provide the Services to Client as an independent contractor, not as an employee of Client. ZGlobal shall not have or claim any right arising from employee status.

ARTICLE 4
CONFIDENTIALITY; PROPRIETARY RIGHTS

4.1 Confidentiality.

(a) Each Party shall hold in confidence all information disclosed to it by the other Party or its representatives that pertains to Client’s or ZGlobal’s business, as the case may be, and that is not publicly available, including this Agreement, proprietary practices, technical information and relevant data ("Confidential Information"). The Parties hereto acknowledge that SVCEA is a local agency and subject to provisions of the California Public Records Act (Cal. Government Codes section 6250 and following). The Parties are expressly authorized to disclose the existence of this Agreement and the Term. Unless otherwise provided by this Agreement or Applicable Laws, all other terms of this Agreement are confidential and neither Party may disclose such confidential information to anyone, other than (i) as may be agreed to in writing by the Parties in advance of such disclosure; (ii) to any of such Parties' directors, officers and employees and directors, officers and employees of affiliated companies and representatives thereof or their advisors who need to know such information and agree, for the benefit of the other Party, to treat such information confidentially to the same extent required by this Agreement; (iii) to the extent required to be disclosed by Applicable Laws or legal process or other mandatory or voluntary standard, and then only to the extent of such requirement; or (iv) to any actual or potential lender or lenders providing financing to a Party or any of its affiliates, to any actual or potential investor in a Party or any of its affiliates or to any other potential acquirer of any direct or indirect ownership interest in Party or any of its affiliates or to any advisor providing professional advice to Party or any of its affiliates or to any such actual or potential lender, investor or acquirer who needs to know such information and agree to treat such information confidentially to the same extent required by this Agreement. The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in
accordance with the express terms and conditions of this Agreement. This provision will survive for a period of five (5) years following the expiration of this Agreement.

(b) Confidential Information shall not include (i) information that is publicly available or that enters the public domain pursuant to Applicable Laws, or (ii) information obtained by a Party from a third party not known to be under an obligation of non-disclosure to Client or ZGlobal, as the case may be.

(c) Notwithstanding the foregoing, each Party may disclose Confidential Information to the extent necessary to perform this Agreement, and to any Governmental Authority, but only to the extent legally required to do so. If a Party is requested or required by any Governmental Authority to disclose any of the other Party’s Confidential Information, such Party shall provide the other Party with prompt notice of such request(s) so that the other Party may seek, at its sole expense, a protective order or other appropriate remedy with respect to such disclosure.

4.2 Proprietary Rights. Client shall retain all rights, title and interest in and to all models, tools, systems or processes owned by and used or developed by ZGlobal in the course of providing Services pursuant to this Agreement including, but not limited to, patent rights, trade secrets, mask works and copyrights; provided, however, that ZGlobal shall have a non-exclusive right to use said models, tools, systems or processes to serve Client or other agencies approved by Client without further consideration.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 ZGlobal’s Representations and Warranties. ZGlobal represents and warrants to Client as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and in each jurisdiction where it is required to be qualified as a foreign corporation;

(b) It has obtained all regulatory approvals and Permits necessary for it to legally perform its obligations under this Agreement;

(c) It possesses the requisite expertise to perform its obligations hereunder, and it is not restricted in any manner, through an agreement not to compete or similar agreement, from performing the Services for Client;

(d) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(e) This Agreement constitutes ZGlobal’s legally valid and binding obligation enforceable against it in accordance with the terms thereof; and
(f) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

5.2 Client’s Representations and Warranties. Client represents and warrants to ZGlobal as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of California;

(b) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(c) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with the terms thereof; and

(d) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

5.3 Annual Updates. Upon the request of the other party on or prior to the anniversary of the Effective Date and no later than thirty (30) days after each anniversary of the Effective Date, ZGlobal and Client shall each confirm in writing to the other that their respective representations and warranties set forth above remain true and correct.

ARTICLE 6
RELATIONSHIP OF THE PARTIES; DISCLAIMERS

6.1 Relationship of the Parties. ZGlobal shall act as Client’s agent while performing the Services hereunder. Except when and to the extent that ZGlobal is performing the Services, neither Party has the right, power or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of or on behalf of the other Party, or to enter into any agreement or undertaking for, or act as or be an agent or legal representative of, or otherwise bind, the other Party. Further, this Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the Parties, or any other arrangement other than the contractual arrangement expressly set forth in this Agreement.

6.2 Other Business. Subject to Section 4.1 above, nothing in this Agreement shall preclude ZGlobal from performing Services similar to those hereunder for other clients.

6.3 Warranty Disclaimers. Client acknowledges that it has entered into this Agreement and is contracting to receive the Services based solely upon the expressed representations and warranties in this Agreement. As a result, Client accepts all Services provided under this Agreement “as is” and “with all faults.” The Parties expressly negate and disclaim any other representation or warranty with respect to the Services provided under this Agreement, whether written or oral, expressed or implied, including any representation or warranty with respect to merchantability or fitness for any particular purpose.
ARTICLE 7
PERFORMANCE ASSURANCE

7.1 Performance Assurance. As a condition of Client’s obligations hereunder, ZGlobal shall provide to Client no later than April 1, 2017 and thereafter maintain throughout the Term cash or a letter of credit (the “Performance Assurance”) in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000). The Performance Assurance shall be held by Client as security for ZGlobal’s performance hereunder. If ZGlobal establishes the Performance Assurance by means of a letter of credit, the letter of credit must be provided in a form reasonably acceptable to Client. The Performance Assurance will be returned to ZGlobal at the end of the Term upon the satisfaction of ZGlobal’s obligations under this Agreement (net of any amounts applied to ZGlobal’s obligations). After April 1, 2018, at ZGlobal’s written request, Client agrees to consider in good faith ZGlobal’s request to reduce the amount of the Performance Assurance; provided, however, that any reduction will be made at Client’s sole discretion and Client is under no obligation to grant such request.

7.2 Security Interest in Performance Assurance. To secure its obligations under this Agreement, and until released as provided herein, ZGlobal hereby grants to Client a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Performance Assurance 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 Client, and ZGlobal agrees to take all action as Client reasonably requires in order to perfect Client’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.

7.3 Event of Default. Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by ZGlobal, Client may do any one or more of the following:

(a) Exercise any of its rights and remedies with respect to the Performance Assurance, including any such rights and remedies under law then in effect;

(b) Draw on any outstanding letter of credit issued for its benefit; and

(c) Liquidate all Performance Assurance then held by or for the benefit of Client free from any claim or right of any nature whatsoever of ZGlobal, including any equity or right of purchase or redemption by ZGlobal.

Client shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce ZGlobal’s obligations under this Agreement (ZGlobal remains liable for any amounts owing to Client after such application), subject to Client’s obligation to return any surplus proceeds remaining after these obligations are satisfied.
ARTICLE 8
LIMITATION OF LIABILITY; INDEMNITY

8.1 Limitation of Liability.

(a) To the extent permitted by Applicable Laws, ZGlobal hereby agrees to indemnify, defend and hold harmless Client, its partners, officers, directors, representatives and employees (collectively, the “Client Indemnitees”), from and against any and all losses, claims, damages and liabilities (including third-party claims, reasonable attorney, consultant, accounting and other professional fees, and reasonable fees and costs actually incurred in enforcing this Agreement, and any penalties or fines imposed by Governmental Authority) (collectively, “Losses”) relating to ZGlobal’s performance of the Services and any breach by ZGlobal of the provisions of this Agreement, except to the extent caused by the fraud, negligence or the willful misconduct or breach of this Agreement by the Client Indemnitees. The foregoing notwithstanding, to the extent a Loss is due to a communications failure between ZGlobal and the CAISO, ZGlobal’s liability hereunder, unless excused by Force Majeure, shall be limited to reimbursing Client for only those fees or charges imposed by CAISO or any other third party caused by the failure of ZGlobal to communicate the necessary information received from Client in a timely manner.

ZGlobal shall be promptly notified in writing of any such claim or suit brought against any Client Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such Client Indemnitee) of such claim or suit through counsel reasonably acceptable to Client. The Client Indemnitees shall provide, at ZGlobal expense, such cooperation as ZGlobal may reasonably request in connection with its defense or settlement of the claim or suit against such Client Indemnitee.

(b) To the extent permitted by Applicable Laws, Client hereby agrees to indemnify, defend and hold harmless ZGlobal, its partners, officers, directors, and employees (collectively, the “ZGlobal Indemnitees”), from and against any and all Losses arising from the breach by Client of the provisions of this Agreement including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of this Agreement by the ZGlobal Indemnitees.

Client shall be promptly notified in writing of any such claim or suit brought against a ZGlobal Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such ZGlobal Indemnitee) of such claim or suit through counsel reasonably acceptable to ZGlobal. The ZGlobal Indemnitees shall provide, at Client expense, such cooperation as Client may reasonably request in connection with its defense or settlement of the claim or suit against such ZGlobal Indemnitee.

(c) For the avoidance of doubt, consistent with the provisions set forth in Section 8.1 above, neither Party shall have any responsibility or liability for any third party agreements not incorporated by reference by this Agreement or transactions not contemplated by this Agreement entered into by the other Party, including but not limited to such Party or any third
party failing to perform, inadequately performing, and/or incorrectly performing under or breaching any such third party agreements or transactions.

(d) Except as expressly provided herein, nothing in this Agreement shall be construed to create a duty to, any standard of care with reference to, or any liability in connection with any person not a party to this Agreement.

(e) In no event shall either Party be liable to the other Party for any consequential, incidental or indirect damages for any cause of action, whether in contract or tort or otherwise. Incidental, consequential or indirect damages include, but are not limited to, lost profits or revenues and loss of business opportunity, whether or not the Party was aware or should have been aware of the possibility of such damages.

8.2 Limitation on Damages. FOR BREACH OF ANY PROVISION, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT DAMAGES AND EACH PARTY AGREES TO WAIVE ALL OTHER TYPES OF DAMAGES OR REMEDIES TO WHICH IT MIGHT BE ENTITLED UNDER THIS AGREEMENT, INCLUDING CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST OPPORTUNITY COSTS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED HEREIN 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.

8.3 Indemnification. Notwithstanding the foregoing Sections 8.1 and 8.2, each Party shall hold the other Party harmless as follows: the indemnitor shall defend, indemnify and hold harmless the indemnitee, its officers, agents and employees from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of indemnitor’s willful misconduct or gross negligence while engaged in the performance of obligations or exercise of rights created by this Agreement, except to the extent of those matters arising from indemnitee’s negligence.

**ARTICLE 9**
**MISCELLANEOUS**

9.1 Entire Agreement. This Agreement is the Parties’ complete and final expression of agreement on the subject matter of this Agreement and supersedes all prior agreements, representations, understandings, negotiations, offers and communications, whether oral or written, regarding the subject matter of this Agreement.

9.2 No Assignment. Neither Party may assign this Agreement or any right or obligation under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section 9.2
shall be void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

9.3 **Modification and Amendment.** This Agreement can be modified or amended only by a written agreement executed by an authorized representative of each Party.

9.4 **Severability.** If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall not be affected. With respect to a provision held invalid or unenforceable, the Parties shall amend this Agreement as necessary to effect the Parties’ original intent as closely as possible.

9.5 **No Waiver.** If on any occasion a Party does not insist upon the performance of any term, condition or provision of this Agreement, such forbearance shall not operate or be construed as an acceptance of any variation in any term, condition or provision of this Agreement or relinquishment of any right under this Agreement. No waiver by either Party of any right or of any default by the other Party under this Agreement shall be effective unless the waiver is in writing and signed by the waiving Party, and no waiver shall operate or be construed as a waiver of any other or further right or as a waiver of any future default, whether of like or different character or nature.

9.6 **Governing Law.** This Agreement is governed by and shall be construed according to the laws of the State of California, without regard to principles of conflicts of law.

9.7 **Preparation of Agreement.** This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

9.8 **No Third-Party Rights.** This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any rights in favor of, any duty to or standard of care with reference to, or any liability to any person not a party to this Agreement.

9.9 **Notices.** Except as otherwise expressly provided in this Agreement, all notices and other communications to be given or made under this Agreement shall be in writing, shall be addressed as specified below, and shall either be personally delivered or sent by courier, by registered or certified mail, or by facsimile. Initially, the respective Parties’ addresses and facsimile numbers are:

If to ZGlobal: ZGlobal Inc.
750 Main St.
El Centro, CA 92243

With a copy to: 604 Sutter Street, Ste. 250
Folsom, CA 95630

If to Client

__________________________________________

__________________________________________

11
All notices shall be deemed delivered (a) when delivered in person, (b) if received on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party’s facsimile number specified above and, if received on a day that is not a Business Day for the receiving Party, on the first Business Day following the date transmitted by facsimile to the receiving Party’s facsimile number specified above, (c) one day after being delivered to a courier for overnight delivery, addressed to the receiving Party at the address specified above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above), or (d) five (5) days after being deposited in a United States Postal Service receptacle, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party at the address specified above (or such other address as such the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any Party may, by written notice, change the address or facsimile number, or both, to which notices and communications are to be sent.

9.10 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute only one legal instrument. The delivery of an executed counterpart of this Agreement by facsimile shall be deemed to be valid delivery of the counterpart.

9.11 Survival. Notwithstanding any provision herein to the contrary, Articles 3, 4, 6, 7, 8 and 9 shall survive the termination or expiration of this Agreement.

9.12 Publicity. Either Party may issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic or interview) relating to the Services or this Agreement; provided, however, the disclosing Party shall, if reasonably possible, provide advance notice of such disclosure to the other Party.

9.13 Interpretation. In this Agreement:

(a) The headings are for convenience of reference only and shall be ignored in construing this Agreement;

(b) Where the context requires, the singular includes the plural and vice versa;

(c) The words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;

(d) Unless the context otherwise indicates, references in this Agreement to articles, sections or exhibits are references, respectively, to articles, sections or exhibits of or to this Agreement;

(e) All exhibits referenced in this Agreement are incorporated into this Agreement and are an integral part of this Agreement;
(f) If a conflict or inconsistency exists between any exhibit and this Agreement (exclusive of the exhibits), the provisions of this Agreement (exclusive of the exhibits) shall control; and

(g) All references in this Agreement to contracts, agreements and other documents shall be deemed to refer to such contracts, agreements and other documents as amended, modified and supplemented from time to time.

9.14 No Recourse Against Constituent Members of SVCEA.

SVCEA 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 the Joint Powers Agreement effective as of March 31, 2016 (the “Joint Powers Agreement”) and is a public entity separate from its constituent members and under the Joint Powers Agreement such members have not assumed liability for any obligations or liabilities of SVCEA. SVCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. ZGlobal will have no rights and will not make any claims, take any actions or assert any remedies against any of SVCEA’s constituent members in connection with this Agreement.

To evidence their acceptance of this Agreement, the Parties have caused their authorized representatives to sign below as of the Effective Date.

ZGLOBAL INC.

By: 
Name: 
Title: CEO

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: 
Name: 
Title: 

By: 
Name: 
Title: 

29462258x2
EXHIBIT A

Definitions

Each of the following capitalized terms shall, for all purposes of this Agreement, have the respective meanings set forth below.

“Additional Term” has the meaning set forth in Section 1.1.

“Agreement” means this Scheduling Services Agreement, including all exhibits attached to this Agreement, as amended, modified, or supplemented from time to time.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, orders, interpretations, Permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Client Assets, the Services or the terms of this Agreement.

“Balancing Authority” means the entity responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area, and supporting interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Business Day” means any Day other than a Saturday, a Sunday, the day after Thanksgiving, or a Day on which commercial banks in California are authorized or required to close.


“CAISO Tariff” means the CAISO FERC Electric Tariff, as amended from time to time.

“Client Assets” has the meaning set forth in Exhibit B.

“Client Assets Operating Parameters” means the various operating parameters set forth in Exhibit B.

“Commencement Date” means that date declared by Client by written notice to ZGlobal following the Effective Date upon which ZGlobal commences providing any of the Services under this Agreement.

“Confidential Information” has the meaning set forth in Section 4.1.

“Day” means a calendar day beginning at 12:00 midnight, Prevailing Pacific Time.

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.
“Energy” means electricity measured in MWh.

“Event of Default” has the meaning set forth in Section 1.3.

“Financial Settlement Services” has the meaning set forth in Exhibit D.

“Forecasting Services” has the meaning set forth in Exhibit E.

“Force Majeure” means, in respect of a non-performing Party, an event beyond the reasonable control of the non-performing Party that the non-performing Party is unable to prevent, avoid or overcome through the exercise of diligent efforts, and that is not the result of the non-performing Party’s fault or negligence or failure to comply with any provision of this Agreement. The following events, among others, shall, to the extent they meet the requirements set forth in the immediately preceding sentence, constitute Force Majeure: acts of God, landslide, lightning, earthquake, fire, explosion, flood, storm, hurricane, tornado, storm, insurrection, war, blockade, riot, civil disturbance, sabotage, terrorism and embargo.

“Forced Outage” an Outage for which sufficient notice cannot be given to allow the Outage to be factored into CAISO’s day-ahead market or real time market bidding processes.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with applicable standards and the requirements of Governmental Authorities, WECC standards, WREGIS Standards, the CAISO and Applicable Laws. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Authority” means any federal, state, local, municipal, tribal or other governmental, administrative, judicial or regulatory entity having or asserting jurisdiction over a Party, the Client Assets, the Services or this Agreement.

“Interest Rate” means the means the rate of interest per annum publicly announced from time to time by Bank of America as its ‘Prime Rate’, plus three percent (3%), or the maximum rate permitted by Applicable Laws, whichever is less.

“Late Fee” has the meaning set forth in Section 3.4.

“Losses” has the meaning set forth in Section 8.1(a).

“Month” means a calendar month

“Parties” means ZGlobal and Client.
“Party” means either ZGlobal or Client.

“Performance Assurance” has the meaning set forth in Section 7.1.

“Permit” means any license, permit, approval, consent, authorization, waiver, exemption, variance, franchise or similar order of or from any Governmental Authority.

“Primary Term” has the meaning set forth in Section 1.1.

“Outage” means disconnection, separation or reduction in capacity, planned or forced, of one or more elements of an electric system.

“Participating Generator Agreement” means an agreement between CAISO and the owner of a generator that participates in the CAISO markets, a pro forma version of which is set forth in Appendix B.2 to the CAISO Tariff.

“Portfolio Management Services” has the meaning set forth in Exhibit G.

“Risk Management Program Development and Support Services” has the meaning set forth in Exhibit H.

“RECs” means renewable energy certificates, which represent the environmental attributes of the power produced from renewable energy projects and which are sold separately from the electricity commodity from such renewable energy projects.

“Scheduling Coordinator” or “SC” means any entity certified by the CAISO for the purposes of undertaking the functions identified in the CAISO Tariff for Scheduling Coordinators.

“Scheduling Coordinator Services” has the meaning set forth in Exhibit C.

“Security Interest” has the meaning in Section 7.2.

“Service” means any of the Services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services” means all of the services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services Fees” means the various fees for Services performed under this Agreement as set forth in Exhibit I.

“Statement” means a billing statement delivered according to Section 3.2.

“Transmission Owner/Operator” means an entity owning or operating transmission facilities or having firm contractual rights to use such transmission facilities.

“WECC” means the Western Electricity Coordinating Council and its successors.
“WREGIS” means the Western Renewable Energy Generation Information System and its successors.

[End of Exhibit A]
EXHIBIT B

Client Assets


- The following is a list of assets subject to this Agreement (e.g., generators) and, if applicable, load and types of transactions to be scheduled (i.e., CAISO ISTs, imports/exports and WECC bilateral transactions) (collectively, the “Client Assets”).
  
  o Load
  
  o Current Supply Contracts

  o Anticipated

2. Operating Parameters.

- The various operating parameters for the Client Assets are set forth in the agreements below, as may be supplemented from time to time by Client upon prior written notice to ZGlobal (“Client Assets Operating Parameters”).

  o Power Purchase Agreements
  o Meter Service Agreements
  o Participating Generator Agreements
  o Transmission Service Agreements
  o Qualified Reporting Entity Agreements

[End of Exhibit B]
EXHIBIT C

Scheduling and Outage Coordination Services

If applicable, this Exhibit C details the scheduling and outage coordinator services ("Scheduling Coordinator Services") to be performed or provided by ZGlobal at Client’s written request under this Agreement.

1. Categories of Scheduling Coordinator Services

Scheduling Coordinator Services functions vary depending upon location (inside the CAISO vs. outside the CAISO) and need for real-time support. At Client’s written request, ZGlobal shall perform the Scheduling Coordinator Services for the following categories:

- CAISO
  - 7-day per week day-ahead pre-scheduling Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services

- WECC (non-CAISO)
  - Business Day day-ahead Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services

2. Description of Scheduling Coordinating Services

Scheduling Coordinator Services may include scheduling and/or bidding of Client’s generation, load, transactions and contractual resources with the appropriate Balancing Authorities, Transmission Owners/Operators, purchasing/selling entities and others as necessary.

In order to effectively provide Scheduling Coordinator Services, ZGlobal shall perform activities and tasks and Client shall provide information and support as described in the following paragraphs.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Scheduling Coordinator Services listed in this Exhibit C that ZGlobal shall provide.

3.2 Designation of ZGlobal as Client’s Scheduling Coordinator. At least ten (10) Business Days before the Commencement Date for ZGlobal to provide Scheduling Coordinator Services on behalf of Client, Client shall have performed all tasks necessary to allow ZGlobal to provide Scheduling Coordinator Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on behalf of Client such as OASIS, OATI (and/or other applicable transmission scheduling applications), the CAISO’s SIBR and CMRI systems, meter data and meteorological data. Prior to the
Commencement Date, ZGlobal will identify all tasks necessary for Client to complete so that ZGlobal can commence the Scheduling Coordinator Services on the Commencement Date.

3.3 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively bid and/or schedule Client’s resources, load and transactions (“Portfolio”) into the applicable market/Balancing Authority Area. This includes data such as Client’s load information, transactions with counterparties, facilities’ capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information required by the CAISO or Balancing Authorities. Prior to the Commencement Date, ZGlobal will identify the information required from Client under this paragraph.

Information required for day-ahead pre-scheduling shall be provided no later than 7:30 AM Pacific Prevailing Time on the trading/pre-scheduling day in accordance with the Western Electricity Coordinating Council’s (WECC’s) pre-scheduling timelines and CAISO Tariff. For example, the current WECC pre-scheduling timeline requires that on schedules for flow days Friday and Saturday be submitted on Thursday. Similarly, schedules for flow days Sunday and Monday are required to be submitted on Friday. The CAISO pre-schedules one day prior to flow day every day.

Information required for day-of scheduling shall be provided no later than 30 minutes prior to the applicable scheduling deadline. For WECC Balancing Authorities other than the CAISO, the hour-ahead scheduling deadline is currently 20 minutes prior to the flow hour. For the CAISO, the real-time scheduling deadline is currently 75 minutes prior to the flow hour.

3.4 Fees and Costs Imposed as a Result of Scheduling and/or Bidding. Client shall be entitled to and responsible for all costs and revenues charged or paid to ZGlobal and/or Client from Balancing Authorities, Transmission Owners/Operators, and the CAISO, or other third parties as a result of ZGlobal scheduling and/or bidding Client’s Portfolio. This includes items such as the CAISO’s Grid Management Charge (“GMC”), ancillary services and energy imbalance, among others. The intent is that ZGlobal acts as a conduit for dollar flows between Client and the CAISO, Balancing Authorities, Transmission Owners/Operators, and other third parties.

Client payments for all costs and fees shall be remitted to ZGlobal no less than two (2) Business Days prior to the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract. Client understands and agrees that failure to timely remit any such costs and fees to ZGlobal could result in Client’s security being drawn upon, as further described in paragraph 3.5 below.

3.5 Client Security. To ensure ZGlobal’s performance of the Services, and to secure Client’s payment obligations hereunder, Client agrees to post the following forms of security:

- **CAISO Registration Security.** ZGlobal is required to post $500,000 with CAISO to demonstrate ZGlobal’s ability to act as a SC on an on-going basis (the “Registration Security Deposit”). ZGlobal shall post and maintain the
Registration Security Deposit as required by the CAISO at no cost or expense to Client.

- **Estimated Aggregate Liability Security.** ZGlobal is also required to post with CAISO an amount greater than 111.11% of ZGlobal’s Estimated Aggregate Liability (“EAL”)/9 as SC for Client. ZGlobal’s EAL is determined by the CAISO for SC obligations based on outstanding, estimated and extrapolated financial amounts. Within five (5) Business Days of ZGlobal’s written request, Client agrees to deposit security with ZGlobal in an amount equal to the lesser of (a) $75,000 or (b) the actual EAL obligation (as determined using the CAISO EAL calculation), which will be utilized to satisfy ZGlobal’s EAL security requirements (“EAL Security Deposit”). If ZGlobal’s EAL increases during the Term, ZGlobal shall promptly notify Client and Client shall promptly deposit additional security with ZGlobal such that the EAL Security Deposit is never less than 111.11% of ZGlobal’s EAL (as determined using the CAISO EAL calculation) up to $75,000. If Client ever fails to timely remit any costs and fees to ZGlobal as required under paragraph 3.4 above, then Client understands that CAISO may draw upon the EAL Security Deposit to satisfy any outstanding ZGlobal obligations as SC for Client. If the EAL Security Deposit is ever drawn upon by CAISO, then Client shall promptly replenish the amount that was drawn. ZGlobal shall return the EAL Security Deposit to Client within five (5) Business Days of the termination of this Agreement.

4. **ZGlobal’s Responsibilities**

4.1 **Professional Services.** ZGlobal shall perform the following Scheduling Coordinator Services in a professional manner consistent with the requirements of this Agreement and Good Industry Practices and Applicable Laws.

4.2 **Scheduling.** ZGlobal shall submit to the CAISO and/or Balancing Authorities schedules and/or bids consistent with the CAISO’s and/or Balancing Authorities’ timelines as prescribed by their tariffs and Client’s CAISO Participating Generator Agreements (if required).

4.2.1 **Final Schedules.** ZGlobal shall provide Client with final confirmed day-ahead pre-schedules no later than 5:00 PM Pacific Prevailing Time the day prior to the day that electricity flows. Any changes to the pre-schedules shall be provided to Client as soon as practicable, but no later than 8:00 AM Pacific Prevailing Time the next day.

4.2.2 **OASIS and Other Pertinent Applications.** If Client uses applications such as OASIS, OATI and ICE, and ZGlobal’s access to such applications is necessary for its performance of the Services under this Agreement, upon ZGlobal’s written request Client shall provide reasonable access to such applications to the extent required by ZGlobal to perform the Services under this Agreement.

4.2.3 **Outage Reporting and Notification.** ZGlobal shall provide the CAISO, Balancing Authorities and/or Transmission Owners/Operators with all required notices and updates regarding Client’s generation facilities as required by applicable procedures,
requirements and standards. This includes information such as SLIC outage requests, SLIC Forced Outages, CAISO Forced Outage reports, among other requirements.

4.2.4 NERC Tagging and Checkout. ZGlobal shall be responsible for all tagging and checkout of schedules consistent with pertinent timelines.

[End of Exhibit C]
EXHIBIT D

Financial Settlement Services

If applicable, this Exhibit D details financial settlement services ("Financial Settlement Services") to be performed or provided by ZGlobal at Client’s written request under this Agreement.

1. Categories of Financial Settlement Services

Financial Settlement Services functions vary depending on the specific Scheduling Coordinator Services provided to Client (e.g., CAISO, bilateral transactions, Open Access Transmission Tariff (OATT), and power purchase agreements (PPA)). In coordination with the Scheduling Coordinator Services set forth in Exhibit C, ZGlobal shall perform Financial Settlement Services for the following categories:

- CAISO Settlement statement verification and invoice processing
- CAISO Shadow settlement
- OATT statement verification
- PPA statement verification
- Bilateral transactions verification by counterparty

2. Description of Services

ZGlobal will provide Financial Settlement Services on behalf of Client to allow for settlement of Client’s transactions with the appropriate Balancing Authorities, Transmission Owners/Operators, counterparties and others as necessary. Such Financial Settlement Services shall coincide with the Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 CAISO Settlement Verification. ZGlobal will download the CAISO daily settlement statements and review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the CAISO’s charges/revenues are accurate. ZGlobal will also provide Client with a summary description of the CAISO charge types and how they are applied to Client’s schedules and metered volumes.

On a weekly basis or pursuant to the CAISO Payment Calendar (as defined below), ZGlobal will receive or remit payments on behalf of Client for all CAISO Invoices and Payment Advices related to their CAISO transactions. Pursuant to Exhibit C, paragraph 3.4, all CAISO costs and revenues related to Clients’ transactions shall be the responsibility of Client.

In the case of net Payment due to CAISO, Client shall remit funds to ZGlobal no less than two (2) Business Days prior to the CAISO due date published on the CAISO payment calendar available on its website ("Payment Calendar"). In the case of net payments due to ZGlobal for the Client transactions, ZGlobal will remit funds to Client no less than two (2) Business Days after the CAISO posts funds to ZGlobal. In both cases, ZGlobal will provide an invoice or payment advice to Client for remittance.
2.2 CAISO Shadow Settlement. ZGlobal will independently perform parallel CAISO settlement calculations prior to the CAISO’s publication of settlement statements to provide Client with preview of expected CAISO charges for agreed CAISO charge types related to the Scheduling Coordinator Services that ZGlobal is providing to Client under this Agreement (the “Shadow Settlement”). The CAISO Shadow Settlement results will be compared to CAISO charge types and differences between dollar values will be highlighted and investigated when deemed necessary. ZGlobal shall publish regular exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices and on an annual basis. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month in addition to an annual report summarizing monthly content.

2.3 OATT Statement Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the charges are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client’s schedules and metered volumes.

2.4 PPA Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the charges/revenues are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client’s schedules and metered volumes.

2.5 Bilateral Transactions Verification by Counterparty. ZGlobal shall review settlement statements for accuracy and coordinate with third parties as necessary to resolve discrepancies. Upon confirming accuracy of such statements, ZGlobal will provide a final invoice to Client for remittance to the appropriate parties.

2.6 Dispute Submittal. ZGlobal shall act as Client’s representative with regard to disputes associated with Client’s facilities and transactions for which ZGlobal is providing Scheduling Coordinator Services. This includes informally querying the CAISO with respect to the dispute or questionable charge, formally submitting disputes per the CAISO’s dispute process and providing Client with progress status and eventual results of the dispute. To the extent there are other types of disputes, ZGlobal shall assist Client by providing information and data as necessary to resolve such disputes.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Financial Settlement Services listed in this Exhibit D that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively settle Client’s Portfolio into the applicable market/Balancing Authority Area. This includes data such as Client’s load information, transactions with counterparties, facilities’ capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, Settlement Quality Meter Data (as that term is defined in the CAISO Tariff), access to relevant

D-2

29462258v2
meteorological data and all other pertinent information required by counterparties, the CAISO, or Balancing Authorities.

3.3 Payments. Payments shall be remitted no less than two (2) Business days prior to the CAISO, Balancing Authorities and Transmission Owners/Operators timelines required per the appropriate tariff or contract.

4. ZGlobal’s Responsibilities

4.1 Professional Services. ZGlobal shall perform the Financial Settlement Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

[End of Exhibit D]
EXHIBIT E

Forecasting Services

If applicable, this Exhibit E details forecasting services ("Forecasting Services") to be performed or provided by ZGlobal at Client’s written request under this Agreement.

1. Categories of Forecasting Services

Forecasting Services functions vary depending upon resource type, number of resources and location of resources. At Client’s written request, ZGlobal shall perform the Forecasting Services for the following categories:

- Total Load
  - Annual energy demand (MWh/month)
  - Quarterly energy demand (MWh/month)
  - Monthly energy demand (MWh/month)
  - Day-Ahead preschedule demand by hour (MWh/hour)
  - Intra-day (Hour-Ahead) schedule volumes (MWh/hour)

2. Description of Services

ZGlobal proposes to provide Forecasting Services on behalf of Client to allow for scheduling of Client’s demand with the CAISO and other appropriate Balancing Authorities and others as necessary. Such Forecasting Services shall coincide with then Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 Day-Ahead Forecasting. ZGlobal will use a computerized algorithm to convert input data to a 24-hour energy forecast of Client’s demand. The forecast will be used for Day-Ahead prescheduling purposes, and will be produced at a time sufficient to meet relevant markets’ and counterparties’ processing timelines. The input data will include, but not be limited to, relevant meteorological data, historical data, and time of day and year.

2.2 Intra-Day (Hour-Ahead) Forecasting. ZGlobal will utilize relevant meteorological historical data, and time of day and year to determine an hourly energy forecast for the upcoming hours of the day necessary for Hour-Ahead scheduling purposes.

2.3 Longer Term (Monthly, Quarterly, Annual) Energy Production Forecast. ZGlobal will utilize relevant historical data, expected change in customer base and external factors such as economic growth to determine an hourly forecast for the period (up to one year) as directed by Client.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Forecasting Services listed in this Exhibit E that ZGlobal shall provide.
3.2 **Information to be Provided by Client to ZGlobal.** Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively forecast Client’s demand to allow for scheduling into the CAISO and as applicable, other market/Balancing Authority Areas. This includes data such as historical energy demand, meteorological data, and expected changes in customer base. Information shall be provided by Client to ZGlobal in time sufficient to perform Forecasting Services, as determined and specified in writing by ZGlobal. Information shall be provided by Client in electronic format to ZGlobal’s Oracle database or other automation-ready format to be specified by ZGlobal, without errors. If ZGlobal is required to subscribe to additional data services, described below in Paragraph 4, Client shall also remain current on pass-through costs of paid data services. As a forecast necessarily requires input data, any failure by Client to provide data will result in the inability of ZGlobal to provide a forecast.

4. **ZGlobal’s Responsibilities**

4.1 **Professional Services.** ZGlobal shall perform the Forecasting Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws. ZGlobal will endeavor to provide Client’s forecast in a timely manner, and in accordance with appropriate trading timeframes. ZGlobal will subscribe to paid data services, if ZGlobal deems necessary for use as input data as noted in above in Paragraph 2, and will invoice Client for the cost of such service(s), including any costs shared among multiple other clients, if applicable.

ZGlobal will endeavor to produce forecasts as accurate as possible. As demand forecasting is an inexact art, ZGlobal makes no warranty of accuracy of its forecasts. Client indemnifies and holds harmless ZGlobal for any direct or indirect financial loss or other damages due to inaccuracy of forecasts or failure to produce forecasts.

5. **Intellectual Property**

The forecast results and its methodologies are the proprietary intellectual property of ZGlobal. ZGlobal grants Client royalty-free use of forecasts for the purposes stated above in Paragraph 2. ZGlobal reserves the right to update, improve, or otherwise alter its forecast methodologies without notice. ZGlobal may use forecasts and related information created on behalf of Client in a non-identifiable manner for purposes unrelated to the client, such as in publication in trade journals, presentation at conferences or industry forums, or in advertising. In such cases, ZGlobal will notify Client of such use.

[End of Exhibit E]
EXHIBIT F
Facilities Management Services

Not Applicable

[End of Exhibit F]
EXHIBIT G

Portfolio Management Services

If applicable, this Exhibit G details specific services ("Portfolio Management Services") to be performed or provided by ZGlobal at Client’s written request under this Agreement.

1. Categories of Portfolio Management Services

Portfolio Management Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (real-time, day-ahead, forward). At Client’s option, Client shall expressly direct ZGlobal in writing to perform Portfolio Management Services for the following categories:

- Assess and manage Client’s net open position by performing analysis to develop strategies for:
  - Short term Energy positions (Operating Month through Real Time)
  - Capacity positions
  - Transmission positions (including CAISO markets)
  - Financial positions
  - Energy Storage and Demand Response bidding

- Utilize applications and data for assessment of Client’s portfolio. Examples of applications and data are shown below:
  - Production forecast for renewable energy resources
  - Production meter data for renewable energy resources
  - Imbalance energy costs for specific resources
  - Other costs that affect resource revenue
  - Execute financial transactions:
    - Forward (including the CAISO’s Congestion Revenue Rights (CRRs))
    - Day-Ahead
    - Hour-Ahead

- Assist Client with developing in-house expertise as directed by Client. This includes training, information, data and analysis.

2. Description of Services

ZGlobal proposes to provide Portfolio Management Services on behalf of Client to allow for managing Client’s net open position.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit G that ZGlobal shall provide.
3.2 Authorization for ZGlobal to Transact on Behalf of Client. To the extent reasonably required by ZGlobal to perform the Portfolio Management Services requested by Client, Client will provide authorization for ZGlobal to transact on Client’s behalf consistent with parameters established by Client and agreed upon by ZGlobal in writing prior to engaging in such transactions. As a condition of performance of the Portfolio Management Services, ZGlobal will identify and Client shall have performed all tasks necessary to allow ZGlobal to provide Portfolio Management Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on behalf of Client.

3.3 Information to Be Provided by Client to ZGlobal. ZGlobal shall identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client’s net open position, effectively bid, schedule and execute transactions in order to close Client’s net open position. This includes data such as Client’s load information, transactions with counterparties, facilities’ and contractual economic data, capabilities and limitations, planned and Forced Outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information.

Parameters required for Day-Ahead and Hour-Ahead Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than 48 hours prior to day that electricity is to be scheduled onto the electrical grid.

Parameters required for forward Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than one calendar week prior to day that electricity is to be scheduled onto the electrical grid.

3.4 Fees and Costs Imposed as a Result of Portfolio Management Services. For transactions that ZGlobal transacts on behalf of Client, Client shall be responsible for all costs and revenues Client incurs as a result of such transactions. Costs and revenues may emanate from Balancing Authorities, Transmission Owners/Operators, the CAISO or third parties. This includes items such as the CAISO’s Grid Management Charge (GMC), ancillary services, among others. The intent is that ZGlobal acts as a conduit for dollar flow between Client and the CAISO, Balancing Authorities, Transmission Owners/Operators and third parties.

4. ZGlobal’s Responsibilities

4.1 Transactions. At Client’s written direction, ZGlobal shall execute transactions on behalf of Client designed to implement Client’s portfolio management strategy. Prior to executing any transactions, ZGlobal and Client shall document portfolio management strategy, roles, responsibilities, allowable transactions (for example, product, term, and counterparty), and process for performing Portfolio Management Services pursuant to this Agreement.

4.2 Strategy Review. Client and ZGlobal shall meet on a regular basis to review Client’s portfolio management strategy, but no less than twice per year.
4.3 **Transaction Data.** All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

4.4 **Reports.** ZGlobal shall publish regular Portfolio Management Services reports. Reports shall include exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month. ZGlobal shall provide standardized monthly reports including, but not limited to, the following, upon Client’s request: net short and long positions, day ahead energy charges, imbalance charges, portfolio changes, and potential areas for improvement and CRR effectiveness reports. Upon Client’s request, ZGlobal shall also provide ad hoc settlement and contract analysis and settlement charge code and billing determinant data.

4.5 **Professional Services.** ZGlobal shall perform Portfolio Management Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

[End of Exhibit G]
EXHIBIT H

Risk Management Program Development and Support Services

If applicable, this Exhibit H details specific services ("Risk Management Program Development and Support Services") to be performed or provided by ZGlobal at Client’s written request under this Agreement.

1. Categories of Risk Management Program Development and Support Services

Risk Management Program Development and Support Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (policies, processes, and procedures). At Client’s written request, ZGlobal shall perform Risk Management Program Development and Support Services for the following categories:

Initial assessment of Risk Policy Review Current Risk Management Documents and Tools

- Confirmation of Organizational Objectives,
- Confirmation of Client’s Risk Management Organizational Structure and Responsibilities,
- Understanding of procurement strategy, including methods for measurement and management of net open positions for the short, mid and long-term,
- Perform comprehensive review of information and documentation provided by Client
- Assess and document Client’s risk tolerance
- Develop for discussion purposes approaches for monitoring and managing Net Open Position on an intermediate and long-term basis and associated risk
- Compare and contrast existing practices and information with those that are needed to reflect Client’s risk tolerance

Develop Comprehensive Risk Policy Consistent with Client’s Risk Tolerance, includes provisions for the following:

- Measuring and closing Net Open Position in the short-term (less than one year); Concepts and approaches for intermediate and long term management
- Procurement to satisfy load obligations
- Submitting load and resource bids and offers into markets
- Executing bilateral physical transactions including exposure to credit risk
- Executing financial transactions
- Submitting offers to markets
- Hedging instruments consistent with Client’s risk tolerance
- Approved products

Develop Operating Procedures for Risk Management Activities

- Measuring and closing Net Open Position in the short term (less than one year)
- Procurement to satisfy load obligations
- Executing bilateral physical transactions including exposure to credit risk
- Executing financial transactions
- Submitting offers into markets
- Hedging instruments consistent with Client’s risk tolerance
- Approved products

Develop documented material suitable for presentation to management and/or Board of Directors and will include:

- Confirmation of Organizational Objectives,
- Confirmation of the Risk Management Organizational Structure and Responsibilities,
- Identification and prioritization of Risks given its portfolio definition,
- Analysis of current Risk Tolerance including assessment of limit structures and approved products and recommendations for improvement,
- Understanding of procurement strategy, including methods for measurement and management of net open positions for the short, mid and long-term,
- Recommendations for changes to credit procedure and counterparty transaction limits,
- Updated Risk Management Policy, and
- Updated reporting and metrics as needed.
- Develop and present material to Client’s management team for approval
- Modify material based on feedback from Client as necessary
- Discussion of intermediate and long term Net Open Position management

On-going Support Services. Once the updated policy and procedures including approved risk tolerances have been adopted, ZGlobal will be available for on-going support upon request to provide the following services as outlined in approved risk procedures:

- Provide on a monthly basis counterparty credit risk exposure report,
- Perform annual counterparty credit strength evaluation and provide credit assessment based on the clients approved counterparty credit limits, including evaluating new counterparties on as needed basis,
- Assist in establishing the proper security requirements for purchase power agreements based on client’s desired level of risk exposure,
- Assist in the review of letters of credit and parental guarantees received as security deposits from counterparties,
- Monitor counterparty business risk and provide reporting on news pertaining to their business and could have impact, including providing updates from credit rating agencies when applicable,
- Evaluate periodically the energy risk management policy and procedures, and provide recommendations to improve overall effectiveness including comparison with other municipal utilities and best practices for similar entities,
- Review the hedging strategy and compare with other municipal utilities and best practices for similar entities. Provide recommendations if needed,
- Assess risks of term transactions and long-term agreements,
- Perform evaluation of the current value-at-risk calculation and provide recommendations to improve overall effectiveness. Provide recommendations on risk metrics appropriate for a municipal entity to measure risk exposure, and

ZGlobal will provide on-demand support through the duration of this contract. Lead times to complete requested services will vary depending on the tasks. Based on the availability of team members high-level schedules will be determined by mutual agreement.

2. Description of Services

ZGlobal proposes to provide Risk Management Program Development and Support Services on behalf of Client to create their Risk Management Program and provide support in managing Client’s net open position.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit H that ZGlobal shall provide.

3.2 Information to Be Provided by Client to ZGlobal. ZGlobal will identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client’s risk including:

- Credit assessment for new counterparty is completed upon review of third-party security documents
- Third party review of security documents assumes that documents are readily available.
- Input data is readily available for assessing hedging strategy and estimating Value at Risk calculation
- All necessary information to allow ZGlobal to determine Client’s net open position and other metrics defined by the documented Risk Policy, Process, or Procedure.

4. ZGlobal’s Responsibilities

4.1 Strategy Review, Client and ZGlobal shall meet on a regular basis to review Risk Management documentation and review the risk strategy, but no less than once per year.

4.2 Required Data, All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

4.3 Reports, ZGlobal shall publish regular reports. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per quarter.
4.4 Professional Services, ZGlobal shall perform these services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

[End of Exhibit H]
EXHIBIT I

Services Fees

This Exhibit I describes the Services Fees ("Services Fees") to be remitted to ZGlobal from Client for all Services performed pursuant to this Agreement. It also lists additional contact information for Client and ZGlobal.

Service Fees

- Note Service Fees Shown Below are Waived for the First Six Months after each service Start Date as listed in Section 2.2.

- Set-up and Scheduling Coordinator Transition Fees = $0

- Scheduling Coordinator Services Fee = $4,250 per month for 12 months then escalated by 2.0% each year thereafter

- Financial Settlement Services Fee = $0

- Forecasting Services Fee = $5,125 per month for 12 months, then escalated by 2.0% each year thereafter

- Facility Management Services Fee = $N/A

- Portfolio Management Services Fee = $6,425 per month for 12 months, then escalated by 2.0% each year thereafter

- Risk Management Program Development and Support Services Fee = $0

[End of Exhibit I]
EXHIBIT J

Contacts

Real Time:
Tel: 760-483-5000
24hrdesk@zglobal.biz

Additional Contacts:

Day Ahead:
Eric Vaa       Tel: (916)985-9461       E-mail: eric@zglobal.biz

Monthly/Structured:
Kevin Coffee   Tel: (916)985-9461       E-mail: kcoffee@zglobal.biz

Deal Confirmations:
Christine Vangelatos   Tel: (916)985-9461       E-mail: christine@zglobal.biz

CLIENT CONTACTS

[End of Exhibit J]
EXHIBIT K

Information Resources

This Exhibit K describes the software, databases, data, and information portal(s) developed or acquired by ZGlobal on Client’s behalf that ZGlobal shall provide Client and Client’s designated representatives and consultants access to in connection with the Services:

- **MCG Integrated Asset Manager (IAM)** –

  Services provided under this Agreement include storing Client’s energy transactional and settlement data hosted and maintained by MCG via a software services agreement with ZGlobal. Client’s operational, scheduling and settlement data stored in the MCG IAM shall be provided electronically as part of the Generation and Load Scheduling Services via regular data downloads, reporting and/or ad hoc requests, including:

  - Email communication
  - Shared folders
  - Pushed reports

Client shall retain Rights in Data, Confidentiality and Non-Disclosure for all its scheduling, settlement and contractual information. **CAISO Shadow Settlements**

CAISO shadow settlements that are used to validate CAISO daily and monthly settlement statements, invoices and payment notices will be made available to Client via a mutually agreed method through customized reports and bill determinant files. Shadow settlement data and files are to be calculated or prepared using the relevant CAISO shadow settlement system utilized by ZGlobal during the term of this Agreement between ZGlobal and Client including but not limited to: Power Settlements Settlecore, MCG IAM and/or other customized tools developed by ZGlobal staff. CAISO shadow settlements shall be provided as part of Generation Scheduling Services and Load Scheduling Services, as applicable.

- **CRR Analysis**

Results of CRR analysis performed for Client including any inputs (e.g. - prices, constraints and outages) used to prepare such results will be made available to Client via a mutually agreed method through customized reports and data files. CRR analyses are to be performed utilizing various database services and tools acquired by ZGlobal to perform such analysis, including but not limited to: Yes Energy’s PowerSignals, ZGlobal proprietary Oracle databases, CAISO OASIS, Plexos Integrated Energy Model and/or other similar data sources and applications. Direct access by Client staff to one or more of ZGlobal’s database sources or software tools shall be governed by any relevant software license or use agreements ZGlobal has with the relevant third party during the term of this Agreement between ZGlobal and Client. In some cases, this may require Client to have its own agreement and fee structure with said third party and ZGlobal will promptly notify
Client if a separate agreement is required. Systems related to CRR Analysis shall be provided as part of the Portfolio Management Services.

[End of Exhibit K]